# VALUABLE LAW WORKS

PUBLISHED BY

# STEVENS AND SONS,

LIMITED,

119 & 120, CHANCERY LANE, LONDON, W.C.

MARCH, 1891.

**Palmer's Company Precedents.**—Conveyancing and other Forms and Precedents for use in relation to Companies subject to the Companies Acts, 1862 to 1890. Arranged as follows:—Promoters, Prospectuses, Agreements, Memoranda and Articles of Association, Resolutions, Notices, Certificates, Private Companies, Power of Attorney, Debentures and Debenture Stock, Petitions, Writs, Pleadings, Judgments and Orders, Reconstruction, Amalgamation, Arrangements, Special Acts, Provisional Orders, Winding-up. With Copious Notes and an Appendix containing the Acts and Rules. *Fifth Edition.* By FRANCIS BEAUFORT PALMER, assisted by CHARLES MACNAGHTEN, Esqrs., Barristers-at-Law. *Royal 8vo.* 1891.
"In company drafting it stands unrivalled."—*Law Times.* *Price* 36*s. cloth*

**Goddard's Treatise on the Law of Easements.**—By JOHN LEYBOURN GODDARD, Esq., Barrister-at-Law. *Fourth Edition. Demy 8vo.* 1891. *Price* 21*s. cloth.*
"An in[illegible] Solicitors' Journal

**Godefr**[illegible] *Edit.*
By [illegible] *8vo.*
1891

**The A**[illegible] nas
SNC[illegible] Mr.
Just[illegible] R, of
the [illegible]
"A bool[illegible] *view.*

**Greenv**[illegible] ece-
dent[illegible] tice
relat[illegible] dded
Con[illegible] By
HA[illegible] *Price*
16*s.*
"One o[illegible] com-
plete guid[illegible]

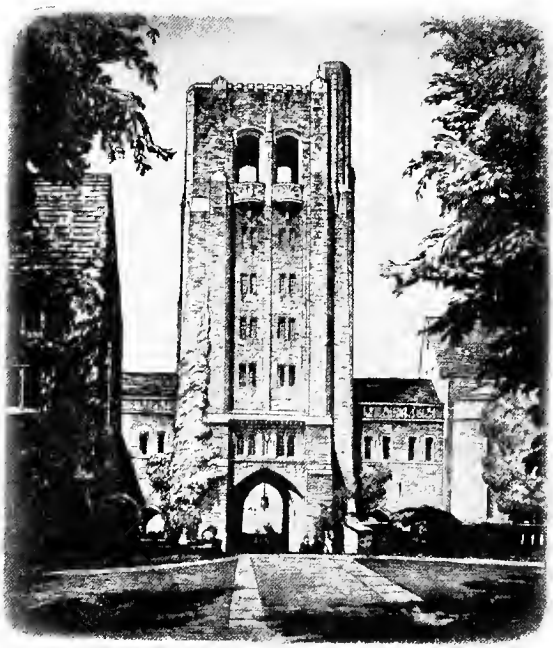
**Pollock**[illegible] ing
the[illegible] OCK,
Bart[illegible]

**Pollock**[illegible] s of
Obli[illegible] which
is a[illegible] ndia.
By [illegible] *Demy*
*8vo.*

**Pollock**[illegible] on
the[illegible] land.
*Fift*[illegible] Bart.,
M.[illegible]

**Smith'**[illegible] *tion.*
By [illegible] sisted
by [illegible] 1890.
*Pri*[illegible]
"Of th[illegible] 0.

**Pridea**[illegible] rta-
tion[illegible] AUX.
late[illegible] t, and
JOI[illegible] 1889.
*Pr*[illegible]
"The n[illegible]





*** *A Catalogue of New Law Works* (1891) *post free on application.*

**Pitt-Lewis' Winding-up Practice.**—A Manual of the Practice as to Winding-up in the High Court and in the County Courts, being the Companies (Winding-up) Act, [illegible] and Associations (Part IV. of the Compa[illegible] the Companies Winding-up Rules [illegible] plete Practice of the County Courts [illegible] of Poole. *Demy* 8*vo.* 1891. *Pri*



**Pitt-Lewis' Complete** [illegible] including that in Admiralty [illegible] Act, 1888, and other existing Acts, [illegible] index to Official Forms, Additional [illegible] with Supplementary Volume containing New Winding-up Practice [illegible] WIS, Esq., Q.C., M.P., Recorder of Poole. 3 *Vols. Demy* 8*vo.* 1890-91. *Price* 2*l.* 10*s. cloth.*

"**The Standard County Court Practice.**"—*Solicitors' Journal.*

**Edmunds on Patents.**—The Law and Practice of Letters Patent for Inventions, with the Patent Acts and Rules annotated, and the International Convention; a full Collection of Statutes, Forms and Precedents, and an Outline of Foreign and Colonial Patent Laws, &c. By LEWIS EDMUNDS, assisted by A. WOOD RENTON, Esqrs., Barristers-at-Law. *Royal* 8*vo.* (992 *pp.*) 1890. *Price* 1*l.* 12*s. cloth.*

"We have nothing but commendation for the book. Conceived in a large and comprehensive spirit, it is well and thoroughly carried out. . . . . The statement of the existing law is accurate and clear. . . . . The book is one to be recommended."—*Solicitors' Journal*, June 14, 1890.

**Sebastian's Law of Trade Marks** and their Registration, and matters connected therewith, including a Chapter on Goodwill. Together with the Patents, Designs, and Trade Marks Acts, 1883-8, and the Trade Marks Rules and Instructions thereunder, Forms and Precedents; the Merchandise Marks Act, 1887, and other Statutory enactments; and the United States Statutes, 1870 to 1881, and the Rules and Forms thereunder, and the Treaty with the United States, 1877. *Third Edition.* By LEWIS BOYD SEBASTIAN, B.C.L., M.A., of Lincoln's Inn, Esq., Barrister-at-Law. *Demy* 8*vo.* 1890. *Price* 1*l.* 5*s. cloth.*

"The work stands alone as an authority upon the law of trade marks and their registration."—*Law Journal*, August 2, 1890.

**Chitty's Index to all the Reported Cases** decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a Selection of Irish Cases on or relating to the Principles, Pleading and Practice of Equity and Bankruptcy from the Earliest Period. *Fourth Edition.* Wholly Revised, Re-classified, and brought down to the end of 1883. By HENRY EDWARD HIRST, Esq., Barrister-at-Law. *Complete in* 9 *Vols. Royal* 8*vo.* 1883-89. *Price* 12*l.* 12*s. cloth.* *** *The Volumes may be had separately to complete Sets.*

"**The work is thoroughly well done.**"—*Law Quarterly Review.*

**Fisher's Digest of the Reported Decisions of the Courts of** Common Law, Bankruptcy, Probate, Admiralty, and Divorce, together with a selection from those of the Court of Chancery and Irish Courts. From 1756 to 1883 inclusive. Founded on Fisher's Digest. By JOHN MEWS, Assisted by C. M. CHAPMAN, HARRY H. W. SPARHAM, and A. H. TODD, Barristers-at-Law. *In* 7 *Vols. Royal* 8*vo.* 1884. *Price* 12*l.* 12*s. cloth.*

**Mew's Consolidated Digest of all the Reports in all the** Courts for the Years 1884-88 inclusive. By JOHN MEWS, Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 1*l.* 11*s.* 6*d. cloth.*

**The Annual Digest for 1889 and 1890.** By JOHN MEWS, Barrister-at-Law. *Royal* 8*vo. Price each* 15*s. cloth.* *** *The above works bring Fisher's Common Law and Chitty's Equity Digests down to the end of* 1890.

**Roscoe's Criminal Law.**—A Digest of the Law of Evidence in Criminal Cases. *Eleventh Edit.* By HORACE SMITH and GILBERT GEORGE KENNEDY, Esqrs., Metropolitan Police Magistrates. *Demy* 8*vo.* 1890. *Price* 1*l.* 11*s.* 6*d. cloth.*

"What Roscoe says, most judges will accept without question."—*Law Times.*

**Roscoe's Nisi Prius.**—A Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—*Fifteenth Edition.* By MAURICE POWELL, Esq., Barrister-at-Law. 2 vols. *Demy* 8*vo.* 1891. (*Nearly ready.*)

**Brooke's Notary.**—A Treatise on the Office and Practice of a Notary of England. With a full Collection of Precedents. *Fifth Edit.* By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. *Demy* 8*vo.* 1890. *Price* 1*l.* 1*s. cloth.*

THE

# LAW RELATING

TO

# GOODWILL.

BY

CHARLES E. ALLAN,

M.A. (Edin.), B.A., LL.B. (Cantab),

OF THE INNER TEMPLE AND OF THE WESTERN CIRCUIT, BARRISTER-AT-LAW.

LONDON:

STEVENS AND SONS, LIMITED,

Law Publishers and Booksellers,

119, CHANCERY LANE.

1889.

LONDON:

PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE.

# PREFACE.

"But really 'goodwill' is a word of which few people understand the meaning," said Lord Justice Cotton in a case that was before him a few years ago. If the allegation is true, this may be in part due to the fact that the subject has never been exhaustively treated in any text-book, and the numerous decisions in relation to it have not been rendered easily accessible. The object of the Author in this little work has been to supply this want, by bringing together the various reported cases in connection with the goodwill of businesses; and he has also endeavoured to set forth, shortly, the principles expressed in the judgments and illustrated by the decisions in these cases. In doing this he has not hesitated to avail himself of the researches and opinions of well-known writers on Partnership and on Trade Marks, in whose works the subject naturally arises incidentally: he trusts that in the text he has properly acknowledged his indebtedness to them. He has also referred to a number of American cases, when he has considered that they illustrated or developed the principles laid down in the

English Courts. The few Scotch decisions that exist on the subject have also been given at some length; and as the law in relation to Goodwill is practically the same for both countries, he trusts that the book will be found useful and trustworthy by the profession alike in Scotland and in England.

Besides treating of the law affecting Goodwill upon its assignment, voluntary and involuntary, the Author has also endeavoured to discuss the questions connected with Goodwill which arise incidentally—upon the Compulsory Sale of Statutory Undertakings, upon the Compulsory Taking or Injuring of Land, and also as affecting the Rateable Value of Land. In these branches of the subject he has had the benefit of having his manuscript revised by his friend Mr. J. H. Balfour Browne, Q.C., and he takes this opportunity of thanking him for the trouble he has so kindly taken. He desires also to thank his learned friends Mr. E. W. Ormond and Mr. J. D. Sheil, both of the Inner Temple, for their valuable assistance; to the latter he is especially indebted for the great care he has exercised in verifying and indexing the numerous references.

C. E. A.

12, King's Bench Walk, Temple,
*April*, 1889.

# TABLE OF CONTENTS.

## CHAPTER I.



## CHAPTER II.



## CHAPTER III.



## CHAPTER IV.

## CHAPTER V.



---

## CHAPTER VI.



---

## CHAPTER VII.



---

# TABLE OF CASES CITED.

# THE LAW RELATING TO GOODWILL.

## CHAPTER I.

### INTRODUCTORY.—THE VARIOUS MEANINGS AND DEFINITIONS OF GOODWILL.

Introductory.

THE task of establishing a business or a professional practice is generally a matter that requires the expenditure of time, labour, and money. The general public are slow to purchase a new comer's goods—to test or rely upon a stranger's skill. Perseverance and industry are, however, not unusually successful, and our commercial or professional man who has worked steadily through the weary period of probation finds, sooner or later, that his goods or services are in fairly constant demand. This is seldom due, however, to the number of his promiscuous customers or clients, but rather to the fact that certain persons go to him regularly. These persons have found that he is honest and trustworthy; that his goods are of high quality, or that his skill and knowledge are commendable; they have been satisfied with the treatment they have received in the past, and are loth, in the absence of some reliable recommendation or other special circumstances, to run the risk of transferring their custom to another. They have, in fact, a confidence in the man, and a good will towards him.

These regular customers constitute what has been well

called his "connection," commercial or professional, and they afford him the security of a fairly constant income. If he is obliged to carry on his work in such a manner that these customers can no longer resort to him, as, for instance, if he has to leave their neighbourhood, he loses this connection and is thereby seriously prejudiced. The labour and expense by which he has acquired a reputation and gained the good feeling of these persons, would, in such circumstances, be completely lost to him, were it not that experience has shown that, in many cases at least, part of this goodwill may be transferred to another. There are generally to be found persons who are eager to acquire in this way, as it were, a ready-made business, and who are willing to pay large sums of money for the opportunity of so doing.

Goodwill a form of property recognised by the Courts.

The goodwill of a connection thus becomes a valuable form of property of which the Courts take cognizance. It has no existence, however, apart from a particular trade or business which is being carried on (*a*); but beyond this, being capable of a money valuation, it is subject to the general incidents of ownership (*b*). Thus, it may be the subject of sale, of mortgage, or of bequest; it may be an asset available in the hands of a trustee in bankruptcy or of a personal representative. Provision is also made in our statutes for compensation in certain cases to the owner upon its injury or destruction.

Sale of businesses not a recent custom.

Despite, however, this almost universal recognition at the present day of goodwill as a form of property, the law on the subject is of comparatively recent growth. There are indications in the year-books (*c*), and in the

(*a*) Per Romilly, M. R., *Robertson* v. *Quiddington*, 28 Beav. 529.

(*b*) Per Tindal, C. J., *Hitchcock* v. *Coker*, 1 Nev. & Per. 796, 814.

(*c*) *Dyer's Case*, 2 Hen. 5, fo. 5, pl. 26; and see Pollock on Contracts, 4th ed. p. 314.

old reports, of traders agreeing to retire from their business in favour of others; but the matter generally arose in connection with the legality of covenants in restraint of trade. Thus, in 1620, we have the case of *Broad* v. *Jollyfe* (*d*), in which was discussed the validity of a promise by a mercer not to keep a shop in Newport, in the Isle of Wight, in consideration of the plaintiff purchasing his old stock at prime cost. The Court held the promise to be good, remarking that "it is but the selling of his custom and leaving another to gain it." The well-known leading case of *Mitchell* v. *Reynolds* (*e*) upon agreements in restraint of trade, decided in 1711, arose also in connection with the assignment of a business. In that case the plaintiff had taken over the defendant's lease, for five years, of a bakehouse in the parish of St. Andrew's, Holborn, and the defendant had bound himself not to exercise the trade of a baker within that parish during the term, a condition which was held good.

Goodwill first recognised as an asset.

It was somewhat later, however, before goodwill came to be regarded as of value apart from these personal covenants; possibly the first case in this connection being that of *Giblett* v. *Reade* (*f*), before Lord Chancellor Hardwicke in 1743. In that case a testator had carried on, in partnership, the business of printing and publishing a newspaper, which was continued after his death. The children of the deceased printer claimed from his widow and executrix, "under the will and custom of London," the value of his share in the business, and the claim was held admissible by Lord Chancellor Hardwicke, who remarked, that "all things of this sort ought to be taken according to the known nature of the dealing, and the method of the parties considering these matters and carry-

(*d*) Cro. Jac. 596; Noy, 98.
(*e*) 1 P. Wms. 181; 1 S. L. C. 9th ed. p. 430.
(*f*) 9 Mod. 459.

ing them on." He compared the case with that of the executor of a deceased partner in a shoemaking business, and said:—"Suppose the house were a house of great trade, he must account for the value of what is called the goodwill of it."

Principles of the law of goodwill first laid down clearly by Lord Eldon.

The subject was further discussed in one or two reported cases before the end of last century (*g*); but it may be correctly said, that we owe the first clear exposition of the principles of the law of goodwill, as in many other departments of law, to the great judicial mind of Lord Eldon, who had occasion to deal with this subject in a comparatively large number of cases (*h*). Since his time the decisions relating to it have been numerous.

Difficulty in defining goodwill.

A correct definition of goodwill, however, has been always a matter of considerable difficulty; a difficulty that has been admitted by those judges who have attempted the task. This has arisen mainly from the fact that it is a thing incapable of a separate existence; its nature varying with the nature of the business to which it is attached; and also from the word being a commercial term used indiscriminately by mercantile men, and frequently without a clear appreciation of what they mean thereby.

Goodwill confused with those things by which it is transferred.

The subject has been still further complicated by the confounding of the thing itself with the means of transferring it, and with the rights an assignee acquires in order to effect that transfer. Thus, when a trader has his

(*g*) *Worral* v. *Hand* (1791), Peake N. P. 105; *Webster* v. *Webster* (1791), 3 Swanst. 490; *Crespigny* v. *Wittenoom* (1792), 4 Term Rep. 790; *Hammond* v. *Douglas* (1800), 5 Ves. 539.

(*h*) *Bunn* v. *Guy* (1803), 4 East, 190; *Shackle* v. *Baker* (1808), 14 Ves. 468; *Crawshay* v. *Collins* (1808), 15 Ves. 218; *Crutwell* v. *Lye* (1810), 17 Ves. 335; 1 Rose, 123; *Scott* v. *Macintosh* (1813), 1 V. & B. 503; *Kennedy* v. *Lee* (1817), 3 Mer. 441; *Williams* v. *Williams* (1818), 1 Wils. 473; 2 Swans. 251; *Baxter* v. *Conolly* (1820), 1 Jac. & W. 576; *Candler* v. *Carden* (1821), Jac. 225; *Cook* v. *Collingridge* (1823), Jac. 607; Coll. on Partnership, 2nd ed. p. 215; *Dakin* v. *Cope*, 2 Russ. 170.

place of business compulsorily taken from him, and he is unable to obtain another in the neighbourhood, it is the benefit of the goodwill itself that he loses, and which may be of much greater value to him than it could possibly have been to any other, inasmuch as it might have happened that no part was capable of transfer to another (*i*). Its saleable value might be *nil;* his loss might be considerable.

Different means of transfer.

Then, again, the means of transfer are various. In some cases, as, for example, in the case of public-houses, the goodwill passes solely with the premises (*j*). In the case of periodicals it may be transferred with the right to use the old name (*k*); while in other cases, such as professional practices, services of introduction, recommendation, and so forth, are necessary on the part of the vendor, if the purchaser is to acquire the old connection (*l*).

"Goodwill" has two distinct meanings.

These different methods of transfer have given the word two completely distinct meanings, which have arisen in this way. It is evident that in those classes of cases where it may be transferred by means of rights of property—rights *in rem* as distinguished from rights *in personam*—as, for example, by the conveyance of the old business premises or old firm name, it has a value upon transfer which is capable of being estimated apart altogether from the individual who carries on the business; while in those cases where the business is of a purely personal nature it can only be transferred by the recommendation of the assignor, and by his agreeing not to compete with his

(*i*) *Cooper* v. *Metropolitan Board of Works*, 25 Ch. D. 472; *White* v. *Commissioners of Public Works*, 22 L. T. N. S. 591.

(*j*) *Llewellyn* v. *Rutherford*, L. R. 10 C. P. 456; *Kennedy* v. *Lee*, 3 Mer. 452.

(*k*) *Bradbury* v. *Dickens*, 27 Beav. 53.

(*l*) See *Austen* v. *Boys*, 2 De G. & J. pp. 626, 635, per Lord Chelmsford; and see *infra*, Chap. III.

assignee. In the case, then, say of death or bankruptcy, that goodwill which can be assigned by means of rights other than personal is an asset, while the other is not. Undoubtedly, in many instances, the transfer of the goodwill may be properly effected only by a combination of these; but it is enough that it can have a measurable value apart from all rights *in personam*.

Goodwill without more, what it is.

When the Courts, therefore, have been called upon to give a meaning to the word "goodwill" standing alone without more, it has been the custom to consider merely those rights which exist apart from the assignor, by means of which the goodwill may be in whole or in part acquired.

This distinction has been frequently pointed out by our judges and others (*m*). Thus, in *Kennedy* v. *Lee* (*n*), in which the business was that of a nursery gardener, Lord Eldon said:—

Lord Eldon.

"Where two persons are interested in trade, and one by purchase becomes sole owner of the partnership property, the very purpose of sole ownership gives him an advantage beyond the actual value of the property, and which may be pointed out as a distinct benefit, essentially connected with the sole ownership." . . . "In that sense, therefore, the goodwill of a trade follows from, and is connected with, the fact of sole ownership. There is another way in which the goodwill of a trade may be rendered still more valuable; as by certain stipulations entered into between the parties at the time of one relinquishing his share in the business; as by inserting a condition that the withdrawing partner shall not carry on the same trade any longer; or that he shall not carry it on within a certain distance of the place where the partnership trade was carried on, and where the continuing partner is to carry it on upon his sole and separate account."

(*m*) Story on Partnership, § 99. (*n*) 3 Mer. 441, 452.

This illustrates one of the distinctions as regards the transfer of goodwill: the following remarks by Pollock, C. B., illustrate another:—"Very frequently," he said, "the goodwill of a business or profession, without any interest in land connected with it, is made the subject of sale, though there is nothing tangible in it; it is merely the recommendation of the vendor to his connections, and his agreeing to abstain from all competition with the vendee. Still, it is a valuable thing belonging to himself, and which he may sell to another for valuable consideration" (*o*). Pollock, C. B.

The idea of goodwill meaning in law merely these rights, apart from any restriction on the assignor, was clearly expressed in the case of *Crutwell* v. *Lye* (*p*). In that case the assignee in bankruptcy of the defendant had sold his business of a carrier to the plaintiff, and Lord Eldon then held that the goodwill which had been the subject of sale in that case was "nothing more than the chance that the old customers will resort to the old place."

This phrase, which happily expresses the goodwill as far as it attaches to a place, unfortunately appears to have caused an impression, which lasted for several years, that the only meaning of goodwill, apart from personal stipulations, was its local value as attached to the land or premises. Thus, in *England* v. *Downs* (*q*), Langdale, M. R., defined goodwill as the "chance or probability that custom will be had at a certain place of business in consequence of the way in which that business has been previously carried on." And in *Chissum* v. *Dewes* (*r*), Local goodwill.

(*o*) *Potter* v. *Commissioners of Inland Revenue*, 10 Ex. 147.
(*p*) 17 Ves. 335.
(*q*) 6 Beav. 269.
(*r*) 5 Russ. 29.

and in *King* v. *The Midland Rail. Co.* (*s*), the same idea is expressed (*t*).

This is further illustrated by the remarks of Sir John Cross in *Ex parte Thomas* (*u*), where it was held that the goodwill of a bankrupt's trade, so far as it is local, passes to his assignees, whereas, according to the true principle, not only this, but other rights, such as the right to the firm name and to the trade marks, provided they existed and were of value, would also pass (*v*). "It is easy," he said, "to conceive there to be such a thing as local goodwill arising from the habit which customers have been in of frequenting the same place. There is another kind of goodwill which may be called personal, and this has been said to be incapable of sale. But there may be a goodwill, like that in the present case, which is partly personal and partly local. This, so far as it was personal, remained with the bankrupts, notwithstanding their bankruptcy, and did not pass to their assignees; for it is nothing else than the power to recommend the customers of the old concern to the new one, a power which cannot be exercised by assignees."

Classification of goodwill into local and personal not exhaustive.

The classification into local and personal is happy so far as it goes, but it is not exhaustive, and would not include, for example, the cases in which the firm name was the sole right to which the goodwill attached.

This was first pointed out clearly by Lord Hatherley, then Page-Wood, V.-C., in the case of *Churton* v. *Douglas* (*w*), a case in which the right to use a firm name was in dispute. "Goodwill," he said, "I apprehend, must mean every advantage—every positive advantage, if I may so

Definition by Lord Hatherley.

(*s*) 17 W. R. 113.

(*t*) And see a discussion in 16 Am. Jur. 87—92.

(*u*) 2 M. D. & De G. 294.

(*v*) *Walker* v. *Mottram*, 19 Ch. D. 355; per Lindley and Lush, L.JJ., p. 363.

(*w*) Johnson, 174.

express it, as contrasted with the negative advantage of the late partner not carrying on the business himself—that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business."

This judgment of Lord Hatherley has been generally approved and followed in subsequent cases, so that we have at least two clear meanings attached to the word: first, one strictly legal—meaning all those advantages and rights which, apart from any personal rights, will assist the assignee of a business in obtaining the regular custom of the old connection; and, second, a wider meaning—including further the benefit of personal stipulations with the assignor.

Other meanings.

The term goodwill has also been employed, not quite accurately, to denote what is of the nature of a monopoly; thus, it is not unfrequently applied to express the right that a company may have to supply a district with gas or water (*x*). Again, it is used to denote the exclusive right of holding a refreshment or other stall, or of selling provisions to a certain gathering of people (*y*). This is scarcely an advantage that has been obtained from long continuance, but it is the chance of doing business in a particular place, that chance being almost guaranteed by the fact that no one may compete with the person who has acquired the right. This meaning of the term, however, is so commonly met with, and, inasmuch as it has many characteristics in common with goodwill properly speaking, it can be conveniently treated with it.

(*x*) See *infra*, Chap. VI.

(*y*) *Allison* v. *Monkwearmouth*, 4 El. & Bl. 13; *Rex* v. *Bradford*, 4 M. & S 317.

Text writers on the meaning of goodwill.

Lord Justice Lindley, in his well-known work on Partnership, has remarked that "the term goodwill can hardly be said to have any precise signification" (*z*); the remarks, however, of writers on the same subject in America may help to elucidate its meaning. Parsons, in his able book on Partnership, refers to it as follows:—"The only proper signification of the word must be that benefit or advantage which rests only on the *goodwill* or kind and friendly feelings of others." . . . "It is a hope or expectation which may be reasonable and strong, and may rest upon a state of things which has grown up through a long period, and been promoted by large expenditure of money. And it may be worth all the money it has cost, and a great deal more; but it is after all nothing more than a hope grounded upon a probability" (*a*). In Story's Partnership, goodwill is stated to be "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital, stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation for skill or affluence or punctuality, or from other accidental circumstances or necessities, or even from partialities or prejudices" (*b*).

The attempted definitions are all more or less vague. They are of use only as indicating a means of determining whether or not a certain right, as, for example, the right to use the firm name, as in *Churton* v. *Douglas* (*c*), passes under the term goodwill. It is at least satisfactory that all the rights which are included under that term have now, as far as the strict legal meaning of the word is concerned,

(*z*) 5th ed. p. 439.
(*a*) Parsons on Partnership, pp. 261, 262.
(*b*) Sect. 99.
(*c*) Johnson, 174.

been practically determined, so that a man who purchases the goodwill of a business as such without more words or stipulations, may know exactly what rights he acquires by the purchase, while the vendor, or the bankrupt who is compulsorily deprived of the goodwill attached to his business, may know how far on the old lines he may continue to carry on his trade. The nature of these rights it is proposed to discuss in the following chapter.

## CHAPTER II.

### GOODWILL WITHOUT MORE—ITS MEANING IN LAW.

In the preceding chapter it was pointed out that although the word "goodwill" is frequently used in a loose and popular sense, yet it has a definite meaning put upon it when it is found without more in instruments conveying it. The same meaning is also given to it in interpreting the Bankruptcy Act.

Goodwill passes with rights, without assistance of assignor.

If we have regard to the fact that there are several rights, the acquisition of which will enable the possessor to obtain for himself the good feeling of the customers, apart altogether from any assistance he may receive from the previous owner of the business, it will be evident that these rights, being independent of the old trader, are capable of assignment, and are of value, inasmuch as they enable the possessor to retain the old connection. It is to these rights that the word goodwill, in its strictly legal meaning, is confined. No man can purchase, and no man can sell, the goodwill or good feeling of one man to another. One man may give another opportunities of obtaining this kindly feeling, and the law may deprive a man of those rights by which he had acquired the same and sell them to another. It is these rights a man loses in all cases of involuntary alienation. As they are thus capable of being separated from him, they are capable of being regarded as part of his estate. Some businesses, of course, are of such a nature that there are no rights the conveyance of which

It is those rights that constitute "goodwill" without more.

will enable the possessor to acquire this goodwill, as, say, in the business of an actor.

The rights, then, that enable a person, apart from any agreements with the previous trader, to acquire the goodwill of a business are of two classes :— What those rights are.

I. The possession of the premises and of the old stock.
II. The right to carry on the old business, and to represent that it is the old business that is carried on.

When the word goodwill is used, it usually means only the second of these; the possession of the premises, frequently most important, being generally the subject of special agreement (*a*). Under the second are included the sole right to the trade name, to the trade marks, and to covenants that may have been previously entered into by the owner of the business for its protection. In a great many cases, of course, these may not exist, but when they do, it is they that pass on an assignment of what is called "goodwill," without anything more being added. It will also be noticed that these rights do not include any right as against the old trader to prevent him setting up a similar business in the neighbourhood. This would be a personal right against him, and could not be regarded as an independent asset, or as part of his estate (*b*). Do not prevent assignor competing.

It is now proposed to discuss these rights in detail.

## Sect. I.—*The advantage attaching to the use of the old Premises and Stock.*

In very many cases the person who acquires the premises where a business has been carried on, also acquires all the

(*a*) *Blake* v. *Shaw*, Johns. 732.

(*b*) See *infra*, Sect. II., Subsect. IV.

advantages that pass under the term goodwill. No more striking example of this need be mentioned than that of a public-house. The convenience of its situation, the attractiveness of the building, and the habits of the persons resorting to that place, are so great that the goodwill becomes attached to the premises and passes with them (*c*).

Local goodwill.

This is local goodwill: "the probability that the old customers will resort to the old place" (*d*). When attached to premises in this way, contracts for its assignment can be specifically enforced, which otherwise would not be possible (*e*). It also passes with the premises, so that the mortgagee gets the benefit of it (*f*), and inasmuch as a tenant would give a higher rent on account thereof, it has been held that this extra value is assessable for the payment of rates (*g*). So intimately, indeed, is goodwill connected with the premises, that in the case of *Blake* v. *Shaw* (*h*), it was held that under a gift in a will of "the plant and goodwill of my business" the lease of the testator's house of business at a rack-rent passed to the legatee, inasmuch as the goodwill was not severable from the premises; the stock-in-trade, however, was held not to pass.

The advantages of a place for carrying on some particular trade, are not in themselves part of the goodwill, though they may be of great value in keeping the goodwill of a connection once formed. The case of a nursery garden, as in *Kennedy* v. *Lee* (*i*), well illustrates this, inasmuch as the soil, the aspect, the glass houses, and the growing plants, all tend to confirm the idea that the busi-

(*c*) *Llewelyn* v. *Rutherford*, L. R. 10 C. P. 456.

(*d*) *Crutwell* v. *Lye*, 17 Ves. 335.

(*e*) *Baxter* v. *Conolly*, 1 Jac. & W. 576, 580; *Coslake* v. *Till*, 1 Russ. 376; *Dakin* v. *Cope*, 2 Russ. 170; and see *infra*.

(*f*) *Chissum* v. *Dewes*, 5 Russ. 29.

(*g*) *Allison* v. *Monkwearmouth*, 4 El. & Bl. 13; and see Chap. VI.

(*h*) Johns. 732.

(*i*) 3 Mer. 441.

ness will be conducted in the future as satisfactorily as it has been in the past. Similar cases are those of warehouses adjacent to a railway or navigable river. In such cases the customers may find it more convenient and cheaper to send their goods to the old place than to rival establishments. These conveniences undoubtedly would be of advantage to a person starting a new business in such premises, but when once the premises have been tried, and the place proved suitable for some particular trade, they acquire a new value in the form of goodwill.

Apart, too, from mere local considerations, the reputation of the previous trader attaches sometimes to the place itself, as in, say, Burton ales. This reputation usually attaches to the firm name or to the trade mark, but the place of business may also acquire an enhanced value. Such reputation is often obtained after the outlay of large sums of money upon advertisement of one kind or another, and is an important fact to be considered in estimating the value of a goodwill.

Goodwill may pass with stock.

Important as is the advantage accruing to the possession of the premises, it must not be forgotten that part also may attach to the stock. They are so frequently assigned together that the point has seldom arisen; but, as between the real and personal representatives of a deceased trader, the question as to which is entitled to the goodwill has come up for decision (*k*). Thus, it has been decided that the goodwill of a victualler's business was incident to the stock and licence, and not to the premises on which the business was carried on (*l*). This decision was due partly to the peculiar circumstances of the case, which were as follows:—

A *feme sole* had carried on the business of a licensed

(*k*) *Morris* v. *Moss*, 25 L. J. Ch. N. S. 194; *Bell's Trustees* v. *Bell*, 12 Rettie (1884), 85; *Blake* v. *Shaw*, Johns. 732.

(*l*) *England* v. *Downs*, 6 Beav. 269.

victualler, but, in contemplation of her marriage, she assigned her household goods, furniture, stock-in-trade, brewing utensils, and all other effects upon trusts excluding her husband. After the marriage, the husband had taken possession of the property, and carried on his wife's business for some time, and after her death had sold everything, including the goodwill, which was claimed by the beneficiaries under the trust. Langdale, M. R., in giving judgment in their favour, said, "I must own my opinion is that the goodwill belonged to the wife, and was a part of the settled property as annexed and incident to the things comprised in the deed."

In a recent Scotch case, the personal representatives claimed the value of goodwill upon the sale of a pottery business as a going concern, but the Court held they had got their full share in the enhanced price obtained for the stock-in-trade (*m*). In *Booth* v. *Curtis* (*n*), the goodwill of a public-house was held to pass with the fee simple to the heir-at-law, and not to the next of kin (*o*).

## Sect. II.—*The right to carry on the old Business, and to represent that it is the old Business that is carried on.*

*Crutwell* v. *Lye.*

It was distinctly laid down by Lord Eldon in *Crutwell* v. *Lye* (*p*), that the purchaser of a business acquires the right to carry on and continue the old business, and to represent that it is the same identical business which is carried on. In that case, the trustee in bankruptcy had taken possession of and sold to the plaintiff the defendant's

(*m*) *Bell's Trustees* v. *Bell*, 12 Rettie (1884), 85.

(*n*) 17 W. R. 393.

(*o*) And see *Mellersh* v. *Keen*, 28 Beav. 453; *Boon* v. *Moss*, 70 N. Y. 465.

(*p*) 17 Ves. 335.

business as a carrier. The defendant, after his discharge, had started again in his old trade in competition with the plaintiff, and had issued notices to that effect. Lord Eldon, upon refusing an injunction to restrain the defendant, put the question thus:—"Whether upon a fair understanding or representation agreeable to the fact this person is carrying on the plaintiff's trade?" For an answer he went to the somewhat analogous case of *Hogg* v. *Kirby* (*q*), a case in which the defendant was restrained from publishing a magazine which he had represented as the continuation of a work of the plaintiff which had already been in part published. The principle there laid down was that the defendant would not be restrained from publishing a work *similar* to the plaintiff's if represented as distinct and original, but he was not entitled to represent it as a continuation of the *same* work. Applying this principle to the case before him, Lord Eldon said: "If, under colour of chalking out a different course of trading, he is really carrying on for his own benefit the trade of others, that will give ground for injunction."

The assignor may carry on a similar but not the same business.

In 1859 Lord Hatherley, then Page-Wood, V.-C., very ably discussed and explained this case in his judgment in *Churton* v. *Douglas* (*r*). "The judgment," he said, "in *Crutwell* v. *Lye* distinctly admits that although you may set up a similar business, you are not entitled, when you have sold the goodwill of a business, to represent that you are continuing the *identical* business: you are not to say, I am the owner of that which I have sold—for it really comes to nothing less than that" (*s*). And again: "It appears to me that when the defendant parted with the goodwill of his business to the plaintiffs he handed over to them all the benefit that might be derived from holding themselves out as the persons interested in that particular

*Churton* v. *Douglas*.

(*q*) 8 Ves. 215. (*r*) Johns. 174. (*s*) *Ibid.* p. 193.

business, which business had been identified as being carried on by that particular firm" (*t*).

Same principle still accepted.

These two cases may be regarded as the leading ones on this subject, and the principle laid down in them is now accepted without curtailment or extension. In support of this statement it is necessary only to give the following extract from a joint judgment of the Lords Justices Lush and Lindley in a recent case (*u*) :—"An assignment," they said, "of a business and its goodwill without more appears to us to pass now just as much and no more than in the days of Lord Eldon. As against the assignor it confers on the assignee the exclusive right to carry on the business assigned, and, as incidental to this, it also confers on him the exclusive right to represent himself as carrying on that business, and consequently the right not only to sue the assignor for damages, if he has infringed these rights, but also to restrain him from infringing them if he manifests an intention to infringe them."

To achieve a principle is to obtain a major premise, in the syllogism of which the circumstances of the case form the minor premise, and the decision the conclusion. To get hold of the first step is a great advance; but, to judge from the variety of decisions, the application is not unfrequently a matter of no inconsiderable difficulty. In discussing the application, it is proposed to separate the rights acquired by the assignee from the correlative duties of the assignor.

What the right to carry on the old business includes.

It has been decided, then, that the right of the assignee to carry on, and to represent that he is carrying on, the old business, includes three rights incidental thereto :—

(i) The sole right to use the old *trade* or *firm name;*

(*t*) Johns. pp. 189, 190.

(*u*) *Walker* v. *Mottram*, 19 Ch. D. 355, 363; and see *Burrows* v. *Foster*, 1 N. R. 156.

(ii) The sole right to the *trade marks* connected with the business;

(iii) The right to the benefit of contracts entered into by the assignor with third parties for the protection of the business.

In many cases one or more of these rights may not exist at all. Thus, there may have been no trade marks connected with the business, and no covenants with old employés for its protection; but where each does exist, and is of value, it seems now clear that each passes under the term goodwill. In one case the book debts were ordered also by the Court to be sold along with the goodwill, but they cannot be said to be included in the term (*v*).

SUB-SECT. (i).—*The Right to the Trade Name.*

When a trader or a firm of traders have acquired a business reputation, the right to use the trade or firm name is often very valuable, and the purchaser of the goodwill of the business naturally expects to have the use of it. Since the case of *Churton* v. *Douglas*, to which we have already referred (*x*), it has been accepted law that any advantage attaching to the use of the firm name passes on the assignment of a goodwill. In that case John Douglas and others had carried on, in partnership, the business of stuff merchants, under the style of "John Douglas & Company." The partnership was dissolved, and John Douglas assigned all his interest in the business, and the goodwill thereof, to his late partners and another, who thereafter carried on the business under a new style or name, consisting of their own names with the addition

*Churton* v. *Douglas.*

(*v*) *Johnson* v. *Helleley*, 34 Beav. 63.

(*x*) Johns. 174.

of the words "late John Douglas & Co." Subsequently John Douglas started a rival business in the neighbourhood, in partnership with others, and this firm called itself "John Douglas & Co." The other firm filed a bill to restrain him from carrying on the business of a stuff merchant, either alone or with others, under that name, and the injunction prayed for was granted. The following is extracted from the judgment of Page-Wood, V.-C.:—

"The name of a firm is a very important part of the goodwill of the business carried on by the firm. A person says, 'I have always bought good articles at such a house of business; I know it by that name, and I send to the house of business identified by that name for that purpose.' There are cases every day in this Court with regard to the use of the name of a particular firm, connected generally, no doubt, with the question of trade mark. But the question of trade mark is in fact the same question. The firm stamps its name on the articles. It stamps the name of the firm which is carrying on the business on each article, as a proof that they emanate from that firm; and it becomes the known firm to which applications are made, just as much as when a man enters a shop in a particular locality. And when you are parting with the goodwill of a business you mean to part with all that good disposition which customers entertain towards the house of business identified by that particular name or firm, and which may induce them to continue giving their custom to it. You cannot put it anything short of that. That the name is an important part of the goodwill of a business is obvious, when we consider that there are at this moment large banking firms, and brewing firms, and others, in the metropolis, which do not contain a single member of the individual name exposed in the firm."

Were it necessary to establish this point further, the

case of *Levy* v. *Walker* (*y*) may be referred to. In that case, a partnership business had been sold as a going concern, by a decree of the Court, to one of the two previous partners, and there James, L. J., remarked :—" I think it right to say that the sale of the goodwill and business conveyed the right to the use of the partnership name as a description of the articles sold in that trade, and that that right is an exclusive right as against all the world, so that no other person could represent himself as carrying on the same business" (*z*).

Infringement of right to trade name restrained.

The reason why a person using a firm name which has been used by others is restrained from so doing, is not because there is or can be any property in the name, but because the public may be, or are, thereby deceived, and in consequence of that deception the person whose name has got a reputation suffers injury to his property. Fraud sometimes is the basis upon which the injunction is granted; but even fraud is not necessary (*a*). Misrepresentation, innocent or fraudulent, by which the public are deceived, is sufficient, and the consequential damage to the trader gives him a cause of action.

Fraud not necessary.

No property in a name.

There is no property in a name, because every man, according to English law, is entitled to trade under any name that he pleases, whether it be his own or not, provided only that he do not adopt a name or style by which the public are induced to believe that they are dealing with some other person, or obtaining the goods of some other maker (*b*).

(*y*) 10 Ch. D. p. 436; *Williams* v. *Osborne*, 13 L. T. 498.

(*z*) And see *Bradbury* v. *Dickens*, 27 Beav. 53; *Burrows* v. *Foster*, 1 N. R. 156; *Webster* v. *Webster*, 3 Sw. 90; *Banks* v. *Gibson*, 34 Beav. 566; *Johnson* v. *Helleley*, 34 Beav. 63; and see *infra*, Chap. VI.

(*a*) *Lee* v. *Haley*, L. R. 5 Ch. App. 161, per Giffard, L. J.; *Du Boulay* v. *Du Boulay*, L. R. 2 P. C. 430; *Day* v. *Brownrigg*, 10 Ch. D. 294.

(*b*) *Maughan* v. *Sharpe*, 17 C. B. N. S. 443; *Levy* v. *Walker*, 10 Ch. D. 436, 445; and see *Maxwell* v. *Hogg*, per Cairns, L. C., L. R. 2 Ch. App.

Deception of the public is the ground of restraint.

A man will not be restrained from the use of his own name in carrying on a business simply because the name and business are like those of another; but he must not take advantage of this similarity to deceive the public (*c*). "All the Queen's subjects," said Knight-Bruce, L. J., in *Burgess* v. *Burgess* (*d*), "have a right, if they will, to manufacture and sell pickles and sauce, and not the less so that their fathers have done so before them. All the Queen's subjects have a right to sell them in their own name, and not the less so that they bear the same name as their father."

A recent case—*Beazley* v. *Soares* (*e*)—well illustrates the absence of property in a name; there, the mortgagee of the stock-in-trade and goodwill of a business, and of the right to use the firm name, claimed an injunction to restrain persons claiming under the mortgagor from using that name. Pearson, J., however, refused to grant the injunction, because the plaintiff had never used the name, and never intended to do so.

Purchaser of goodwill must not use old name so as to deceive the public.

The purchaser of the goodwill of a business, who acquires the right to use the old firm name, does not thereby acquire the right to deceive the public himself by representing that he is the same person as his predecessor; but he acquires the right only to represent that he is the legitimate successor, and, as such, he is entitled to restrain other persons, including the assignor, from making use of the old name. If he conceals the fact that the business has changed hands, this will not give ground for an injunction, because "the Court does not interfere to

307; *Williams* v. *Osborne*, 13 L. T. N. S. 498; *Mitchell* v. *Condy*, 37 L. T. N. S. 268, 766.

(*c*) *Holloway* v. *Holloway*, 13 Beav. 209; *Burgess* v. *Burgess*, 3 De G. M. & G. 896; *Massam* v. *Thorley's Cattle Food Co.*, 14 Ch. D. 748; *Perks* v. *Hall*, W. N. (1881) 111.

(*d*) *Supra*.

(*e*) 22 Ch. D. 660.

prevent the world outside from being misled into anything" (*f*); but if a person who deals with him believes that he is dealing with the members of the old firm, this person will not be bound by his contract, and, upon discovering the facts of the case, may refuse to pay the price of the goods supplied to him, and it cannot be recovered (*g*); and it does not matter whether the mistake was induced innocently or by fraud. Deliberate representation may also give ground for criminal proceedings.

Further restriction for protection of assignor.

Another restriction that is placed upon the assignee's use of the old name is that he must not use the name in such a manner as to represent that any of the old members are still in the business, even although due notice has been given of the dissolution of the previous partnership and of the assignment of the business. This restriction seems to have been imposed partly in the interest of the public, but more particularly to prevent inconvenience to the previous owner or owners of the business. If this were not so, the old members of the firm would run the risk of having actions for the new debts brought against them; for, as regards strangers, the fact of their name being in the firm would be *primâ facie*, though not conclusive, evidence against them; thus, they would be *primâ facie* liable on bills of exchange. It would appear, therefore, that they are entitled to be saved this risk (*h*). If they like to run the risk they may do so, for they are not bound to apply for an injunction to restrain the unlimited use of the old name, provided the dissolution of the old partnership has been properly advertised; thus, it was held in *Newsome*

(*f*) Per James, L. J., *Levy* v. *Walker*, 10 Ch. D. 436, 448.

(*g*) *Boulton* v. *Jones*, 2 H. & N. 564; and see *Cundy* v. *Lindsay*, 3 App. Cas. 459, 465.

(*h*) *Scott* v. *Rowland*, 26 L. T. 391; 20 W. R. 508; *Churton* v. *Douglas*, *supra*; *Bullock* v. *Chapman*, 2 De G. & Sm. 211; *Routh* v. *Webster*, 10 Beav. 561; *Chatteris* v. *Isaacson*, 57 L. T. 177; and see *Banks* v. *Gibson*, 34 Beav. 566.

v. *Coles* (*j*) that the old members of the firm were not liable on bills of the new firm carried on under the old name, even to persons ignorant of the dissolution.

This restriction purely personal.

Where no damage can ensue, however, the Court will not interfere under the pretext of protecting the assignors; as, for example, where the name of a deceased partner is used (*k*); or where the retiring partner has changed her name, as by marriage (*l*); or where the assignee simply uses the old name with the word "*late*" before it (*m*). Lord Justice Lindley, in his book on Partnership, says this is a purely personal right, and does not devolve either to executors or trustees in bankruptcy, inasmuch as they are not exposed to risk (*n*).

Most of the cases of this class have arisen in connection with partnerships where the firm name has been made up of the names of the original partners; but the principle that the name passes under the term goodwill is not confined to firm names. It may be the name, for example, of a periodical (*o*), or of a newspaper (*p*); or it may be the name attached to the business premises (*q*), as in the case of an hotel; or it may be the name of some specially manufactured article, such as Condy's Fluid (*r*). In fact it is difficult to draw a line distinguishing between a trade name and a trade mark, both of which pass as incidental to the right of representing that it is the old business that is being carried on.

(*j*) 2 Camp. 617; *Devaynes* v. *Noble*, 1 Mer. 616; *Vullamy* v. *Noble*, 3 Mer. 614, and see *Lewis* v. *Langdon*, 7 Sim. 421.

(*k*) *Webster* v. *Webster*, 3 Sw. Rep. 490, n.

(*l*) *Levy* v. *Walker*, 10 Ch. D. 436.

(*m*) *Churton* v. *Douglas*, *supra*.

(*n*) 5th ed. p. 446.

(*o*) *Bradbury* v. *Dickens*, 27 Beav. 53.

(*p*) *Longman* v. *Tripp*, 2 N. R. 67; *Boon* v. *Moss*, 70 N. Y. 465.

(*q*) *Hudson* v. *Osborne*, 39 L. J. Ch. 79.

(*r*) *Mitchell* v. *Condy*, 37 L. T. N. S. 268, 766.

In the United States the law on this subject is practically the same as in this country, with the exception that in certain States the purchaser of the goodwill of a business is not entitled to trade under the old name, but is only allowed to describe himself as successor to the old firm; while in other States he may only do so on obtaining the written permission of the previous owner of or partner in the business (*s*). Other names, however, may become attached to a business and pass with it. Thus, in *The Glen and Hall Manufacturing Co.* v. *Hall* (*t*), it was laid down that where one has established a business at a particular place, from which he has or may derive profit, and has attached to such business a name indicating to the public where it is carried on, he thereby acquires property in the name, which will be protected from invasion by a Court of Equity on principles applicable in case of the invasion of a trade mark; thus, the designation of an hotel was held to belong to the innkeeper, and to pass with the goodwill (*u*). In *Christy* v. *Murphy* (*v*), the name of a place of amusement was protected; and in more than one case the name of a newspaper has been held to be assignable with the goodwill (*w*).

The law in the United States.

SUB-SECT. (ii).—*The Right to the exclusive Use of the Trade Marks.*

Trade marks are so intimately connected with the goodwill of a business, that the Court interferes to prevent their infringement on the same ground that it restrains the use

A trade mark protected on the same ground as a trade name.

(*s*) *Rogers* v. *Taintor*, 97 Mass. 291; *M'Gowan* v. *M'Gowan*, 22 Ohio St. 370; *Hegeman* v. *Hegeman*, 8 Daly, 1; *Peterson* v. *Humphrey*, 4 Abb. Pr. 394.

(*t*) 61 N. Y. Rep. 226.

(*u*) *Howard* v. *Henriques*, 3 Sand. R. (S. C.) 725.

(*v*) 12 How. Pr. 77; and see cases cited in *Glen* v. *Hall*, *supra*.

(*w*) *Boon* v. *Moss*, 70 N. Y. 465; *Dayton* v. *Wilks*, 17 How. Pr. 510.

of a firm name, that is, on the ground that the public are deceived and the trader's business thereby injured (*x*). Chancellor Walworth, in an American case, put this very clearly (*y*) :—"The Court, in trade mark cases," he said, "proceeds on the ground that the plaintiff has a valuable interest in the goodwill of his trade or business, and that, having appropriated to himself a particular label, sign, or trade mark, indicating that the article is manufactured or sold by him under his authority, or that he carries on his business at a particular place, he is entitled to protection against anyone who attempts to pirate upon the goodwill of his friends, customers, or patrons of trade, by sailing under his flag without his authority."

Only assignable in England with the goodwill.

Finding this close connection, one would expect that in an assignment of the goodwill of a business, whether compulsorily or otherwise, the trade marks (if any) would pass also. It is clear, at least, that according to English statute law they may only be assigned and transmitted in connection with the goodwill of the business concerned in the particular class of goods for which they have been respectively registered, and they are determinable with that goodwill (*z*). A trade mark cannot exist apart from a business (*a*) ; and if a trade mark is put on the register, and there is no business in which it is used, it cannot be assigned (*b*). It is clear, therefore, that they cannot pass without the goodwill.

Not assignable if personal.

But there are some cases in which a trade mark cannot be assigned at all; as, for instance, where it is "so com-

(*x*) *Leather Cloth Co.* v. *Amer. Leather Cloth Co.*, 1 H. & M. 271 ; *Singer Machine Co.* v. *Wilson*, L. R. 3 App. Cas. 376 ; *Millington* v. *Fox*, 3 M. & Cr. 338.

(*y*) *Partridge* v. *Menck*, 2 Barb. Ch. 103.

(*z*) The Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57, s. 70).

(*a*) *Cotton* v. *Gilliard*, 44 L. J. Ch. 90.

(*b*) *Ex parte Lawrence Bros.*, 44 L. T. N. S. 98.

pletely personal as of necessity to import that the goods sold under it have been manufactured by a particular individual" (*c*); in which case it would be a fraud on the public for the assignee of the business to use the mark, and although Courts of Equity would not restrain the use, they will give it no countenance. But if the goods sold with the mark have a reputation, apart from such personal considerations, then the trade mark will be assignable.

That a trade mark passes also under such general assignments as include the goodwill is also clear. In *Cooper* v. *Hood* (*d*), for instance, Romilly, M. R., in interpreting the words, "goodwill, &c.," occurring in an agreement for a sale of a business, said, "These words are connected together, and unite such other things as are necessarily connected with and belong to the goodwill, many of which are easily pointed out; for instance, the use of trade marks, and a contract by the vendor not to carry on a similar business in Great Britain for a reasonable time." In *Hall* v. *Burrows* (*e*), decided by Lord Westbury in 1863, one of two partners had died, and the other had agreed to take over the works and other stock-in-trade of the business, and it was held that the goodwill and trade mark were valuable property of the partnership and might be sold with the works. In *Bury* v. *Bedford* (*f*), it was held that upon the formation of a partnership with a person entitled to the benefit of a trade mark, the mark, in absence of express stipulations to the contrary in relation to it, becomes an asset of the partnership. In *Clements* v. *Shipwright* (*g*), Malins, V.-C.,

(*c*) Per Turner, L. J., *Bury* v. *Bedford*, 4 De G. J. & Sm. 352.

(*d*) 26 Beav. 293.

(*e*) 4 De G. J. & Sm. 150.

(*f*) 4 De G. J. & Sm. 352; and see *Hine* v. *Lart*, 10 Jur. 106; *England* v. *Curling*, 8 Beav. 129; *Dickson* v. *McMaster*, 18 Ir. Jur. 202; *Fulton* v. *Sellers*, 4 Brews. 42 (U. S.); *Howe* v. *Searing*, 6 Bos. 354; 19 How. Pr. 14; 10 Abb. Pr. 264.

(*g*) 19 W. R. 599.

held that, on a sale of a business, the entire goodwill and the right to use the trade marks pass to the purchaser without any express mention of them being made in the deed of assignment.

This last case, perhaps, goes nearest to our proposition that on the sale of the goodwill of a business without more the trade marks of the business, in so far as they are assignable, also pass, and the assignee of the business is entitled to use them, and may restrain others from so doing. It is, perhaps, unnecessary, however, to cite any authority; for if we accept the definition of goodwill in *Churton* v. *Douglas* (*h*), the trade mark is clearly included under the term, for its use is one of the advantages "acquired by the old firm in carrying on its business," and connected with a "matter carrying with it the benefit of the business."

It may be noticed here that on the conveyance of a trade mark the fact of the transmission must be registered (*i*).

### Sub-sect. (iii).—*The Benefit of Agreements in restraint of Trade.*

Such agreements legal in order to protect goodwill.

Covenants in partial restraint of trade have been allowed by the common law of England solely for the purpose of protecting the goodwill of businesses. Employés and assistants not unfrequently bind themselves not to compete with their masters by carrying on a similar trade in the neighbourhood of their master's place of business; partnership articles not unusually contain provisions to the same effect in the event of a partner leaving the firm, and on the sale of the goodwill of a business the vendor is commonly required to enter into covenants of a

(*h*) See *supra*.

(*i*) 46 & 47 Vict. c. 57, ss. 78, 87.

similar kind. Such restrictions are necessary to prevent these respective parties from making use of the opportunities they have received in order to draw away the customers of the original business, and from establishing one of their own at the expense of the master, partner, or purchaser, as the case may be. They tend, in fact, to maintain the goodwill of the old business, and to preserve the old connection. They are perfectly legal if partial, made for valuable consideration, and not more stringent than is required for the protection of the business (*k*).

They continue in force after business assigned.

Agreements of this kind, unless released, or in the absence of express stipulation to the contrary, continue in force during the life of the person who so binds himself; it does not matter if the old business is removed, assigned, or even ceases altogether (*l*).

"If the covenant is binding to its full extent when made, its signification cannot be varied by any subsequent occurrences; and to hold otherwise would be to render its import uncertain, and to impair its efficiency for that protection which the law contemplates as just" (*m*). So, in *Hitchcock* v. *Coker* (*n*), Tindal, C. J., said: "We cannot think it unreasonable that the restraint should be carried further and should be allowed to continue if the master sells the trade or bequeaths it, or it becomes the property of his personal representative."

May be assigned.

The benefit of such covenants or agreements is therefore assignable; provided always that they are not personal only, *i. e.*, entered into solely for the benefit of the individuals then carrying on the business (*o*). They have

(*k*) *Mitchell* v. *Reynolds*, 1 Sm. L. C.; 4 P. Wms. 181; *Davies* v. *Davies*, 58 L. T. N. S. 208, 209; and see *infra*, Chap. VII.

(*l*) *Hitchcock* v. *Coker*, 6 Ad. & El. 438; *Pemberton* v. *Vaughan*, 10 Q. B. 87, and cases *infra*.

(*m*) Per Wilde, C. J., *Elves* v. *Croft*, 10 C. B. 241, 260.

(*n*) See *supra*.

(*o*) *Davies* v. *Davies*, *supra*.

been held to be assignable because they are required for the protection of the goodwill of businesses even after sale (*p*). A person selling a goodwill can therefore undertake that the purchaser shall have the benefit of any such existing covenants.

They pass on the assignment of goodwill.

It is also clear upon authority that such a covenant or agreement will pass without mention upon the assignment of a goodwill without more.

Thus, in *Benwell* v. *Inns* (*q*) the defendant had been in the service of a milkman who carried on business in three places, and the defendant had engaged, as regarded the milkman, his assignees, and successors, not to carry on a similar trade within certain limits. The milkman sold that branch of the business to which the defendant was then attached, to the plaintiff, who retained the defendant in his service for a time. The defendant afterwards left, and attempted to start a rival business, but he was restrained; Romilly, M. R., holding that the plaintiff, as assignee and successor of part of the business, was entitled to the benefit of the defendant's contract.

*Jacoby* v. *Whitmore.*

In *Jacoby* v. *Whitmore* (*r*) we have even a stronger case. In this case one Cheek had sold the "beneficial interest and goodwill" of his business to the plaintiff. The defendant, who was an old employé of Cheek, and who had entered into an agreement not to carry on a similar business within a mile of Cheek's shop, thereupon set up business within that distance. The plaintiff brought an action to restrain him, and it was held that the benefit of the agreement passed under a sale of the "beneficial interest and goodwill;" and an injunction was accordingly granted. Brett, M. R., in his judgment, said:—"Under

(*p*) *Jacoby* v. *Whitmore*, 49 L. T. N. S. 338; *Hitchcock* v. *Coker*, *supra*.

(*q*) 24 Beav. 307.

(*r*) 49 L. T. N. S. 335.

the word 'goodwill' alone in this assignment the benefit of the agreement with Whitmore would, in my opinion, pass. If it would not pass under the word 'goodwill,' it would under the words 'beneficial interest'" (*s*). And Bowen, L. J. :—"It is part of the beneficial interest, and it is part of the goodwill. It is said that the agreement did not bring customers to the shop, but it prevented them from being taken away" (*t*). In a recent case North, J., held that the benefit of such a covenant passed with the goodwill of the covenantee's business to his trustee in bankruptcy, and to his assignee, and the covenantor was restrained, at their instance, from setting up a rival business (*u*).

In another recent case, *Palmer* v. *Mallet* (*x*), a covenant by an assistant to two surgeons, in partnership, not to practise within a certain area was held to be both joint and several, and that on a dissolution of the partnership one of the partners might sue on it alone without the other. Here there had been no sale of the goodwill, so that, on a dissolution, both the partners had a right to the goodwill, and, therefore, to the benefit of the covenant. The defendant, the covenantor, had become assistant to one of the partners, but he was restrained from so doing at the instance of the other partner, the plaintiff.

Law in the United States.

In the United States the doctrine has been carried even further, inasmuch as the assignee of the goodwill has been held not only entitled to the benefit of the covenant, as incidental to the business, but to the sole benefit thereof, with power to release it. This decision seems founded on good reason; for if such agreements are allowed only for

(*s*) *Ibid.* p. 337.
(*t*) *Ibid.* p. 338.
(*u*) *Westacott* v. *Brown* (not reported).
(*x*) 36 Ch. D. 411.

the protection of the goodwill, then, on its sale, the covenantee ceases to have any interest therein, and is, therefore, no longer entitled to the benefit of the agreement made originally for its protection (*y*).

*The Rights and Duties of the Assignor of a Goodwill.*

As the decisions at present stand, the title to this section is to some extent misleading, inasmuch as the legal position of the assignor of a business, after he has parted with it, is in no way different from that of any other member of the public, provided, of course, that he has not bound himself by additional restrictive covenants. It was, however, considered, and it was the law for a number of years, that the assignor of the goodwill of a business without more was, in respect of that kind of business, under greater restraints than any other person, and the controversy cannot yet be said to be definitely at an end. It is, however, clear from the latest decisions the assignor of a business may set up in any place a business, similar in kind to the one he has sold (*z*); he may do so in his own name (*a*); he may enter into competition with his assignees, and may solicit his old customers either publicly or privately (*b*); he may even represent that he was a member of the old firm of which the business has been assigned (*c*). His right to trade is in no way restricted; he must only, like every other person, refrain from representing that he is carrying on

Assignor's rights same as that of any member of the public.

(*y*) *Gompers* v. *Rochester*, 56 Penn. St. 194; *Gueraud* v. *Daudelet*, 32 Maryland, 561.

(*z*) *Crutwell* v. *Lye*, 17 Ves. 335; *Cooke* v. *Collingridge*, Coll. Partnership, 215 (2nd ed.); *Shackle* v. *Baker*, 14 Ves. 468; *Hall* v. *Burrows*, 4 De G. J. & S. 150; *Hudson* v. *Osborne*, 39 L. J. Ch. 79.

(*a*) *Churton* v. *Douglas*, Johns. 174; *Johnson* v. *Helleley*, 34 Beav. 63; *Bond* v. *Milbourn*, 20 W. R. 197.

(*b*) *Pearson* v. *Pearson*, 27 Ch. D. 145; and see *infra*, p. 38.

(*c*) *Hookham* v. *Pottage*, L. R. 8 Ch. 91; *Clark* v. *Leach*, 32 Beav. 14.

the same identical business as his assignee, and he must do nothing that is likely to induce the public to think that he is carrying on the same business.

That the assignor of a business may carry on a business of an exactly similar kind to the one he has parted with, is a doctrine that has never been disputed from the time it was laid down by Lord Eldon, as he did most clearly in more than one case. The assignor must only refrain from representing that it is the identical business (*d*); if he does anything to mislead the public, he will be liable in damages to the assignee, and may be restrained at his instance. Thus, the publication of circulars has been prohibited in which were suggestions that the new firm were successors in trade to the old after the sale of its goodwill (*e*). Similarly, the use of the vendor's own name in connection with others, when misleading, has been restrained (*f*); also, attempts to use the old trade marks, or colourable imitations of them (*g*). The use of the old name by the assignor has also been restrained, when used with the words "late" (*h*) or "from" before it (*i*).

Must not represent that he is carrying on the old business.

Although it has never been disputed that the assignor of the goodwill, and only the goodwill, of a business may carry on an exactly similar business in any locality he pleases, yet considerable conflict of opinion has arisen over the question of his rights and duties in respect of the old customers.

Conflict of decisions as to assignor soliciting old customers.

(*d*) *Crutwell* v. *Lye*, *supra*, and cases under note (*z*).

(*e*) *Mogford* v. *Courtenay*, 45 L. T. 303; 29 W. R. 864.

(*f*) *Churton* v. *Douglas*, *supra*; *Holloway* v. *Holloway*, 13 Beav. 209.

(*g*) *Rogers* v. *Nowill*, 3 De G. M. & G. 614; *Shipwright* v. *Clements*, 19 W. R. 599.

(*h*) *Scott* v. *Scott*, 16 L. T. N. S. 143.

(*i*) *Hookham* v. *Pottage*, L. R. 8 Ch. 91; *Glenny* v. *Smith*, 2 Dr. & Sm. 476.

*Labouchere* v. *Dawson.*

The controversy may be said to have begun with the case of *Labouchere* v. *Dawson* (*k*), decided in 1872 by Lord Romilly, M. R. One or two cases had occurred in which the point had been raised prior to this (*l*), but Lord Romilly's decision was generally regarded as the most authoritative. In this case a long-established brewery business at Kirkstall, Leeds, had been sold to the plaintiffs on the death of one of two partners; but there was no stipulation to prevent the surviving partner—the defendant —from setting up business as a brewer. He did in fact afterwards commence to carry on the business of a brewer at Burton-upon-Trent, and he solicited the customers of the old firm for orders by travellers and agents. Upon a motion to restrain him, it was held that while he was entitled to set up the business of a brewer, and to announce the fact to the public by advertisement or circular, nevertheless he was not entitled to apply to any person who had been a customer of the old firm either "privately by letter, personally, or by a traveller asking such customer to deal with the defendant, and not to deal with the plaintiffs" (*m*).

In order to found this decision, Lord Romilly found it necessary to add another principle of equity to that taken by Lord Eldon in *Crutwell* v. *Lye* (*n*), from *Hogg* v. *Kirby* (*o*). "I am of opinion," said Lord Romilly, "that the principle of equity must prevail, that persons are not at liberty to depreciate the thing which they have sold," and that what is reasonable for the assignor to do in any case must be decided upon the facts of that case.

*Ginesi* v. *Cooper & Co.*

This decision was followed by Jessel, M. R., in the case

(*k*) L. R. 13 Eq. 322.

(*l*) *Cooper* v. *Watson*, 3 Dougl. 413, and *S. C.*, *Cooper* v. *Watlington*, 2 Chitty, 451; *Burrowes* v. *Foster*, 1 N. R. 156.

(*m*) See the Minutes, p. 327.

(*n*) 17 Ves. 335.

(*o*) 8 Ves. 215.

of *Ginesi* v. *Cooper & Co.* (*p*), in 1880, and that learned judge further said, although the point was not raised, that not only may a man who has sold the goodwill of his trade or business not solicit the old customers to deal with him, but, more than that, he must not deal with the old customers, even if they come to him unsolicited. "If I had been asked," he said, "I certainly should have prevented their dealing with the old customers" (*q*). Soliciting the old customers he held to be a fraud on the contract, and thus brought the case under the principle of *Crutwell* v. *Lye*, in which Lord Eldon had distinctly said that if what the assignee did was a fraud on the contract, he would restrain him; but Lord Eldon gave no indication that such a solicitation would have amounted in his eyes to a fraud on the contract. His words seem to tend in the opposite direction. What the defendant, a carrier, had done in this latter case was that he had issued circulars announcing that he had been reinstated in his carrying business, and that his waggons set out at the usual hours; and Lord Eldon said (*r*): "It amounts to no more than that he asserts a right to set up this trade, and has set it up, as the like, but not the same, trade with that sold, *taking only those means which he had a right to take to improve it;* and there is no fact amounting to fraud upon the contract made with the plaintiff."

*Leggott* v. *Barrett.*

The late Master of the Rolls had the point again before him in the same year in the case of *Leggott* v. *Barrett* (*s*). The defendant, on the sale of his share in a business to a copartner, had agreed not to carry on that trade within a certain area. He, however, set up in the same line outside the prohibited area, and went among the old customers

(*p*) 14 Ch. D. 596; and see *Selby* v. *Anchor Tube Co.* (Bacon, V.-C.), W. N. (77) 91.

(*q*) *Ibid.* 599.

(*r*) 17 Ves. at p. 347.

(*s*) 15 Ch. D. 306.

and solicited their custom. In an action to restrain him, Jessel, M.R., granted an injunction both against his soliciting the old customers and also against his actually dealing with them. The defendant submitted to the first part of the injunction, but appealed upon the question of his right to deal with the old customers. The Court of Appeal (*t*) reversed the decision of the Master of the Rolls, and sustained the appeal. James, L. J., in giving judgment, said: "Certainly, I am unable to see any principle upon which we could extend the injunction beyond the very wide terms to which the defendant submits" (*t*); and he seems to indicate that his opinion was that the defendant might have rightly solicited the old customers, even privately; but Brett, L. J., on the other hand, distinctly approved the principle laid down in *Labouchere* v. *Dawson* (*u*).

*Walker* v. *Mottram.*

In 1881 the point was again before Sir George Jessel, and also the Court of Appeal, in the case of *Walker* v. *Mottram* (*x*), and the doctrine of *Labouchere* v. *Dawson* was held to be limited solely to cases of voluntary alienations, both the Master of the Rolls and the Court of Appeal being of opinion that the restriction against soliciting the former customers of the business could not be extended to the case of a compulsory alienation. Here the assignors of the business were the trustees of the defendant, who, upon a petition by him for the arrangement of his affairs by liquidation, had sold his brewery and the goodwill of his business. The defendant afterwards started a fresh business, and, upon seeking assistance in it from his old friends and customers, it was moved to restrain him, but the injunction was refused.

In a joint judgment, Lindley and Lush, L. JJ., said:

(*t*) James, Brett, and Cotton, L. JJ.

(*u*) *Supra.*

(*x*) 19 Ch. D. 355.

"It would, in our opinion, be contrary to the policy of the bankruptcy laws to extend *Labouchere* v. *Dawson* to such a case. It is not necessary to overrule that decision; we leave it where it is, that is to say, it will still be applicable to voluntary sales. But we do not think it ought to be extended to alienations which are compulsory." "The obligation enforced in *Labouchere* v. *Dawson* is, however, a purely personal obligation, and not a mere incident to the transfer of property" (*y*). At another point they say: "At the same time it is, we think, impossible to read the cases relating to goodwill decided before 1872 without coming to the conclusion that the decision in *Labouchere* v. *Dawson* went considerably beyond them" . . . "and *Crutwell* v. *Lye* is a clear authority that, if the assignees of a bankrupt sell his business and goodwill, the purchaser cannot restrain the bankrupt either from commencing a similar business himself, or from soliciting his old customers to deal with him in his new business" (*z*). Baggallay, L. J., however, went further in his judgment in this case, and said expressly that he much doubted the correctness of the decision in *Labouchere* v. *Dawson* (*a*).

The result of this decision was, that the word "goodwill," when used in the Bankruptcy Acts and in compulsory alienations, meant one thing, while the same term without more, when used to express what passes in a voluntary alienation, meant a good deal more. It seems unnecessary to introduce into the strict legal meaning of "goodwill" any personal restrictions. In bankruptcy, the trustee can sell everything that is incident to the business, so far as it is not personal to the bankrupt. He may sell

(*y*) P. 364.
(*z*) Pp. 362, 363.
(*a*) P. 366.

the premises, the trade name, the trade mark, and the benefit of any covenants subsisting for the protection of the business. It is only introducing confusion to extend the meaning in the case of voluntary alienations, especially as purchasers of the goodwill of a business have ample opportunity, prior to purchase, of insisting upon such restrictive covenants as they may deem requisite.

*Pearson* v. *Pearson.*

The law, however, stood thus until 1884, when the Court of Appeal, in *Pearson* v. *Pearson* (*b*), by two to one, expressly overruled *Labouchere* v. *Dawson*. This was the case of the sale of a share in a business, and according to the terms the vendor was to be allowed to carry on the like business wherever he should think fit, and in his own name. An action was brought to restrain him from soliciting the customers of the old firm. The injunction was granted by Kay, J., who felt bound by the authorities, but upon appeal it was dissolved. The whole Court held that the proviso allowing the defendant to carry on the business where he liked took the case out of the principle laid down in *Labouchere* v. *Dawson*, even if that case was good law; but Baggallay and Cotton, L. JJ., founded their judgment expressly on the ground that that case was wrongly decided. Cotton, L. J., after quoting Lord Eldon's judgments, continued thus:—"Lord Romilly rests his decision in *Labouchere* v. *Dawson* on the principle that a man cannot derogate from his own grant. But it is admitted that a person who has sold the goodwill of his business may set up a similar business next door and say that he is the person who carried on the old business; yet such proceedings manifestly tend to prevent the old customers going to the old place. I cannot see where to draw the line. If

(*b*) 27 Ch. D. 145.

he may by his acts invite the old customers to deal with him and not with the purchaser, why may he not apply to them and ask them to do so? I think it would be wrong to put such a meaning on 'goodwill' as would give a right to such an injunction as has been granted in this case. I have thought it right to rest my judgment on the ground that *Labouchere* v. *Dawson* is not to be followed" (*c*). Lindley, L. J., on the other hand, approved of *Labouchere* v. *Dawson*. He says: "It went on the principle that a person who has sold the goodwill of his business shall not derogate from his own grant by doing what he can to destroy the goodwill which he has sold. It is true that if this principle were logically carried out, it would prevent the vendor from carrying on the same sort of business as he has sold; and if the Courts had held that he could not, I do not think that the decision could have been complained of. It startles a non-lawyer to be told that if he buys a business and its goodwill, the seller can immediately enter into competition with him next door" (*d*).

This case probably ends the controversy, at least until some interest at stake is of sufficient importance for the point to be raised in the House of Lords. In the meantime this decision has been followed by Stirling, J., in *Vernon* v. *Hallam* (*e*), who said, "The decision in *Pearson* v. *Pearson* is binding upon me, and moreover, I have been informed during the argument that in a recent case of *Collier* v. *Chadwick* the Court of Appeal took the same view" (*f*).

Assignor's position according to

According to the existing authorities, therefore, it may be correctly said that the assignor of the goodwill of a

(*c*) P. 157.
(*d*) P. 159.
(*e*) 34 Ch. D. 748.
(*f*) *Ibid.* 752; and see *Irish* v. *Irish*, 40 Ch. D. 49.

existing authorities.

business without more may carry on a business of a similar kind, where he likes and as he likes, in the same manner as any other member of the community may lawfully do, and his rights thereunto are in no way altered by the fact that he has previously carried on a similar business which he has assigned.

## CHAPTER III.

### THE GOODWILL OF A PERSONAL BUSINESS.

Not usually transferable.

THE goodwill that is borne to a professional man by his clients or patients, as the case may be, depends often so much upon purely personal qualifications that it is not separable from the individual who carries on the practice. There are in fact no rights by the acquisition of which the possessor will be able to obtain the goodwill of the business without the assistance of the previous practitioner. As has already been pointed out, such businesses are in most cases transferable only by means of the assignor introducing and recommending his successor, and refraining from all competition. In some professional practices the goodwill may have a value apart from such services on the part of the assignor, but in the great majority of instances this value must be so small as not to be cognizable by the law.

No real distinction between a professional and a trade goodwill.

The goodwill existing in such cases has been sometimes termed *personal* goodwill, and it has been suggested that there is a distinction between a professional and a trade goodwill, and that the two are to be considered in different lights (*a*). This distinction, however, cannot exist in fact, for the same rules of law which govern a professional practice must apply to a trade or business connection of

(*a*) Parsons on Partnership, p. 264; 1 Clarke on Partnership and Joint Stock Companies (Sc.), p. 430.

any kind which depends for its existence solely on the skill of the person carrying it on. There can thus be, properly speaking, no goodwill of the business or connection, say, of a tutor, of a play actor, of an artist, or of a highly-skilled artizan. In one case the connection of a tobacco broker was held to be of no value as an asset, inasmuch as the business depended on personal knowledge and exertions (*b*). On the other hand, in the case of medical dispensaries, there is very frequently some goodwill attaching to the premises. The only proper distinction to be drawn between different kinds of goodwill is that already suggested, namely, a goodwill meaning rights which exist apart altogether from the individual who has carried on the business and a goodwill which is the advantage obtained from services to be rendered, and from the surrender by the previous trader or professional man of his personal rights of trading or practising in the locality.

Attorney's business.

The question of the property in the goodwill of an attorney's business has not unfrequently been before the Courts, and in one of the earliest cases on the subject Leach, M. R., held that the goodwill in such a case was of such a personal nature that it could not be a subject of administration (*c*). In *Austen* v. *Boys* (*d*) the same point came before Lord Chancellor Chelmsford. In this case a firm of solicitors was dissolved, and the question discussed was whether a partner retiring from the business was entitled to be allowed something as compensation for loss of goodwill, and it was held that he was not. "It is very difficult," said Lord Chelmsford, "to give any intelligible meaning to the term 'goodwill' as applied to the pro-

*Austen* v. *Boys*.

(*b*) *Davies* v. *Hodgson*, 25 Beav. 177; and see *Stewart* v. *Gladstone*, 10 Ch. D. 626, as to value of goodwill in a commission business.

(*c*) *Spicer* v. *James*, Coll. on Partnership, p. 104; Rolls, M. T., 1830.

(*d*) 2 De G. & J. 626.

fessional practice of a solicitor in this abstract sense." . . . . "The term 'goodwill' seems wholly inapplicable to the business of a solicitor, which has no local existence, but is entirely personal, depending upon the trust and confidence which persons may repose in his integrity and ability to conduct their affairs. I can perfectly understand a solicitor agreeing to relinquish his business in favour of another, and to use his best endeavours to recommend his clients, and engaging not to interfere with his successor by a stipulation not to carry on business within a certain distance; but to sell the goodwill without anything more, and without arranging any price, would be an agreement incapable of specific performance" (*e*).

*Arundell* v. *Bell* (*f*) was a somewhat similar case. The administratrix of one who had been a partner in an attorney's firm, but who had resigned shortly before his death, claimed an allowance in respect of the goodwill, but the Court refused to allow any sum. Jessel, M. R., said, in giving judgment: "It does appear to me that, as a general rule, there is nothing in the nature of a personal asset to be sold which can be fairly termed goodwill in an ordinary partnership between solicitors. The practice of resorting to a particular office is of very little use as regards solicitors. Then you cannot sell the clients' papers, which are the most valuable things of all. A man often gets the papers of another solicitor; but it is illegal. The only other suggestion is, you can sell the right of the firm's name. I take it you cannot. According to our practice it is wrong. I will not say whether it is illegal or not. A solicitor must not issue a writ except in his

*Arundell* v. *Bell.*

(*e*) Pp. 635, 636; and see *Bozon* v. *Farlow*, 1 Mer. 459.

(*f*) 52 L. J. Ch. 537.

own name. He can, and may, and frequently does, associate with his own name the name of a dead partner, whose name also appears; but a solicitor must not, according to our rules, issue writs in the name of another solicitor. Therefore it appears to me that there is nothing analogous to the goodwill in an ordinary trade which you can sell in the case of a partnership of living solicitors" (*g*). Baggallay, L. J., while assenting to the general rule, that there is no personal asset in such business which can be fairly termed goodwill, yet was not prepared to say "that in no case of a dissolution there may not be something analogous to goodwill" (*h*).

Medical practice.

In regard to medical men, surgeons, and dentists, the facts and the law relating to the goodwill of their businesses are pretty much the same as in the case of attorneys, although the instances may be more frequent in which goodwill exists as a form of property independent of personal stipulations. Thus, where a physician has had a dispensing practice, his dispensary usually becomes known in the locality and acquires a reputation, and this it may keep during a succession of occupants. If the physician becomes bankrupt, it is possible that the trustee may get some additional value for the premises in respect of the goodwill; but no one would give very much, as the bankrupt could not be prevented from starting again in a neighbouring house. On the death, however, of the practitioner, inasmuch as he will no longer be able to carry on a rival business, a much larger sum might be obtained for the goodwill.

Generally, however, there is in the strict sense no goodwill of a medical or surgical practice. "What is the meaning of selling a medical practice?" asked Jessel, M. R.,

(*g*) P. 538. (*h*) P. 539.

in *May* v. *Thomson* (*i*). "It is the selling of the introduction of the patients of the doctor who sells to the doctor who buys; he has nothing else to sell except the introduction. He can persuade his patients, probably, who have confidence in him, to employ the gentleman he introduces as being a qualified man, and fit to undertake the cure of their maladies, but that is all he can do. Therefore, when you talk of the sale of a non-dispensing medical practice—of course, when a man keeps what is called a doctor's shop, there is a different thing entirely to sell—you are really talking of the sale of introduction to patients, and the length, the character and duration of the introduction, the terms of the introduction, are everything. And there is something more, according to my experience, in cases of the sale of medical practices; there is always a stipulation that the selling doctor shall retire from practice, either altogether or within a given distance."

*Bain* v. *Monro*.

In the Scotch case of *Bain* v. *Monro* (*k*), the question of the nature of the property in the goodwill of a medical practice came up for decision. In this case, the house in which a medical man had lived, and what was called his practice, were, after his death, sold to the same person by his executor for the benefit of the widow, who undertook to recommend the purchaser to her husband's former patients. The house itself really had formed part of the wife's separate estate, and, although the house and practice were sold separately, it was in effect a condition of the transaction that the purchaser of the house should buy the practice also. In a question between the widow and a creditor of her husband, it was held both by the Lord Ordinary (Curriehill), and by the Second Division of the Inner House, that what had been sold was not so much the

(*i*) 20 Ch. D. 705, 718.

(*k*) Jan. 10, 1878; 5 Rettie, 416.

goodwill of the deceased's practice as the recommendation of the widow to her friends, and was not a subject *in bonis* of the deceased for the value of which the widow as executrix was accountable. The Lord Justice Clerk (Lord Moncrieff) in his judgment said: "There is a clear distinction between the goodwill of a trade and the goodwill of a profession, or, as it is sometimes called, a practice, which depends entirely on the personal qualities, as well as on the personal exertions, of the practitioner. The distinction is thorough and radical, and has already been recognized. I accept Mr. Smith's statement of the result of the authorities as exact—'When the profits of the business result almost entirely from confidence placed in the personal skill of the party employed, as in the case of surgeons or attorneys, the goodwill is too insignificant to be taken notice of' (Mer. Law, 9th ed., p. 193). In a business of a professional nature, the goodwill is of so intangible a nature as to be incapable of transference, and not of appreciable value" (*l*).

From these authorities it may be said that, as a general rule, there is no such thing as a goodwill, strictly so called, of a business which depends for its existence on the personal qualities of the person carrying it on. There is no property in it which can pass to a personal representative on death, nor does it form an asset on the dissolution of a partnership (*m*), nor is it available in the hands of a trustee in bankruptcy. Further, such personal goodwill does not give any increased value to the house or premises where it is carried on, and therefore a mortgagee thereof can receive no benefit from it.

The goodwill of a professional

But there are, undoubtedly, cases of professional businesses which are not so dependent on personal

(*l*) P. 422.
(*m*) *Farr* v. *Pearce*, 3 Madd. 74; *Austen* v. *Boys*, 2 De G. & J. 626; *Arundell* v. *Bell*, 52 L. J. Ch. 537.

qualifications but that some of the goodwill may be transferred without recommendation or introduction. The case of a medical dispensary has been already mentioned, and the premises of dentists sometimes acquire an enhanced value from goodwill. It must frequently be a matter of difficulty to say, in particular cases, what is the value of the personal goodwill, and what of the goodwill existing as an asset, or whether the latter in fact exists.

business not always purely personal.

The case of *Smale* v. *Graves* (*n*), decided in 1850 by Knight-Bruce, V.-C., affords an example of this. Here the widow and the executor of a surgeon-dentist had sold the goodwill of the testator's business for an annuity of 100*l.*, to be paid to the widow for five years. The widow also agreed to introduce the purchaser to the patients of the deceased, and she used her best endeavours to enable the purchaser to succeed in obtaining the business connection of her late husband. The purchaser also took over the stock and the old premises at a valuation. On a creditor's suit, the Vice-Chancellor, reversing the Master, held that the whole or part of the annuity belonged to the estate. "If the Master," he said, "shall allow the defendant something, I shall be disposed probably to agree with him as to the amount he may fix; but I am unable to accede to the proposition that no part belongs to the testator's estate."

*Smale* v. *Graves.*

This decision seems at variance with the Scotch case of *Bain* v. *Monro* (*o*), inasmuch as the purchaser of the business swore, upon affidavit, that he relied upon the widow's personal exertions, and that, if these were not afforded, he would resist payment of the annuity; but it is not clear

(*n*) 3 De G. & Sm. 706.

(*o*) 5 Rettie, 416, see *supra*.

that there may not have been some circumstances which would have made the goodwill of value apart altogether from the exertions of the widow. In so far as a price could be obtained for it without such exertions, to that extent it was an asset, and belonged to the testator's estate.

*Morgan* v. *Schuyler.*

In the case of *Morgan* v. *Schuyler* (*p*), before the Supreme Court of New York, the firm name of a partnership of dentists was considered of value. On a dissolution of partnership of the firm of Morgan and Schuyler, the defendant purchased the plaintiff's share in the partnership stock, took over the old premises, and continued the business, using signs bearing his name, followed by the words "successor to Morgan and Schuyler." This action was brought to restrain the defendant from so doing, and it was held that the defendant did not acquire, by the agreement of dissolution, any goodwill in the business, except such as was incident to his sole ownership of the partnership property, and his exclusive right to use the firm name, and that he had no right to declare himself "successor to" the late firm, and therefore the action was maintainable.

Doubt as to whether professional businesses can be assigned.

Before leaving this part of the subject, it may be noticed that very serious doubts were entertained by eminent judges in the courts of equity as to whether it was right and proper for a professional man for a pecuniary consideration to recommend another to his patients or clients, and to retire in his favour. In 1803, when a case of this kind came before Lord Eldon, he referred the matter to the common law courts to say whether such a contract was good in law (*q*). Under the contract in question an attorney

(*p*) 79 N. Y. 490.

(*q*) *Bunn* v. *Guy*, 4 East, 190; and see *Crespigny* v. *Wittenoom*, 4 Term Rep. 790.

agreed, for a valuable consideration, to relinquish his business, and to recommend his clients to two other attorneys. He further agreed not to practise his profession within certain limits, and he allowed them to make use of his name in their firm for a certain time. This agreement was held to be valid at law. Valid at law.

In a later case (*r*), Lord Eldon, in deciding that an agreement by an attorney to pay a share of his business profits to one who is not an attorney is not illegal, referred to the preceding case in these words:—"I have thought that, consistently with the policy of the law, agreements could not be made by which they (attorneys) contract to recommend those who succeed them. I doubted whether professional men could be recommended not for skill and knowledge in their profession, but for a sum of money paid and advanced. I knew that this would rip up many transactions, and I was happy that the Court of King's Bench was of a different opinion, though I never could entirely reconcile myself to their doctrine."

Langdale, M. R., in 1841, expressed himself to the same effect, and added, that he recollected that Lord Eldon long dwelt and commented on the policy of sanctioning the purchase of recommendations to their old connection, both on the part of solicitors and their clients, and in the case of medical men and their patients. One case he perfectly recollected, in which the professional practice of one physician had been sold to another, wherein the policy of permitting such arrangements was the subject of great discussion and consideration (*s*).

The validity of such transactions has, however, been accepted by Courts of Equity, though Vice-Chancellors Now good in equity.

(*r*) *Candler* v. *Carden*, Jac. 225.

(*s*) *Whittaker* v. *Howe*, 3 Beav. 383.

have not been eager to assist their performance (*t*). Injunctions have, however, been granted to restrain the vendor of an attorney's business from breaking his contract not to carry on a business, although he had agreed to recommend the purchaser to the old clients (*u*).

(*t*) *Ibid.*, and *Thornbury* v. *Bevill*, 1 Y. & C. C. C. 554.

(*u*) *Aubin* v. *Holt*, 2 K. & J. 66; *Nicholls* v. *Stretton*, 7 Beav. 42.

## CHAPTER IV.

### THE INVOLUNTARY ALIENATION OF GOODWILL.

When it is involuntarily alienated.

THE goodwill of a business, in what we have called its strictly legal meaning, being a name applied to certain rights capable of existing apart from the particular individual who has carried on the business, is therefore liable to involuntary alienation as an asset in the following cases :—

I. Upon the bankruptcy of the trader.
II. Upon the death of the trader.
III. Upon the dissolution of a trade partnership in the absence of articles.
IV. Upon the compulsory purchase of an undertaking.
V. When it is connected with land which is taken possession of by a mortgagee.

It is proposed in this chapter to deal with the first four of these *seriatim*, while the fifth will fall to be treated in Chapter VI., upon Goodwill as affecting the value of Land.

It is, however, somewhat difficult to separate the first three under distinct headings, and this for two reasons. In the first place, among the frequent causes of dissolution of partnership are death and bankruptcy; and secondly, the great bulk of cases in which the principles of the law of

goodwill have been laid down have been connected with questions of partnership. It is proposed, however, to deal shortly with the first two of these separately, and afterwards to treat of them as regards partnerships under the third heading.

## SECT. I.—*Alienation upon Bankruptcy or Insolvency.*

Bankruptcy Act, 1883.

Goodwill is expressly mentioned as an asset in the Bankruptcy Act of 1883, which provides that, subject to the provisions of this Act, the trustee may—"sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels" (*a*).

Under previous statutes.

Similar provisions existed in the Bankruptcy Acts of 1861, and of 1869, but, although not specifically mentioned in previous statutes, goodwill was long before these dates treated as an asset which passed to the trustee upon the bankruptcy of a trader, or upon the assignment of his property for the benefit of creditors.

Thus, in *Longman* v. *Tripp* (*b*), decided in 1805, it was held that the right to publish a newspaper passed under an assignment of a bankrupt, as comprised under the words "goods and chattels" in 21 Jac. I. c. 19, s. 11. Sir James Mansfield, the chief judge, there saying: "I remember a case before Lord Mansfield in which the advantage of a newswalk was held to be assets upon a plea of administravit, and I daresay that such an interest has

(*a*) 46 & 47 Vict. c. 52, s. 56, sub-s. 1.

(*b*) 2 N. R. 67; and see *Ex parte Foss*, 30 L. T. 354; 2 De G. & J. 230, on the seizure of this right by a sheriff under a *fi. fa.*

often been sold under commissions of bankruptcy" (*c*). The well-known case of *Crutwell* v. *Lye* (*d*), in which Lord Eldon decided that a trader, after the goodwill of his business had been assigned, might set up a similar business, was also a case arising out of bankruptcy, for the goodwill of the defendant's business as a carrier had been sold by the trustee. Besides these, there are several other cases in which it has been held, under the old Acts, that goodwill is an asset in bankruptcy (*e*). Where, however, the goodwill is local and attached to premises which are mortgaged, the benefit will pass to the mortgagee and not to the trustee (*f*).

Money due to the insolvent or bankrupt in respect of goodwill, will, on the same grounds, pass to the creditors. Thus, Lord Eldon, referring to the case of *Chandler* v. *Gardner* (*g*), which had been before him, said "The legislature destroyed beneficial interests which individuals had in the concerns and habits of their lives; giving them a compensation for interests of that substantial, though not very tangible, nature, something like goodwill;" and he held that this was an interest capable of being disposed of, and that it went to the assignees of the bankrupt.

Settlement of annuities upon sale of goodwill held void, although sale good.

In *French* v. *French* (*h*), which was a creditor's suit for the administration of the assets of a deceased trader, who being in insolvent circumstances had sold his business, part of the consideration was that the purchaser should,

(*c*) *Ibid.* p. 70.

(*d*) 17 Ves. 335.

(*e*) *Ex parte Thomas*, 2 M. D. & De G. 294; *Crawshay* v. *Collins*, 15 Ves. 218; *Bury* v. *Bedford*, 4 De G. J. & S. 352; *Ex parte Foss, In re Baldwin*, 2 De G. & J. 230; *The Buxton Publishing Co.* v. *Mitchell*, 1 Cababé & El. p. 527.

(*f*) *Ex parte Punnett, In re Kitchen*, 16 Ch. D. 226; *King* v. *Midland Rail. Co.*, 17 W. R. 113; *Chissum* v. *Dewes*, 5 Russ. 29.

(*g*) Cited in *Crutwell* v. *Lye*, 17 Ves. at p. 343.

(*h*) 6 De G. M. & G. 95; 25 L. J. Ch. 612.

during the joint lives of the trader and of his wife, pay to them or to the survivor an annuity equal to a certain share of the profits. The annuity to the wife was, by Lord Chancellor Cranworth, held void under 13 Eliz. c. 5, as against the creditors; and he also held that the creditors could impeach the annuity without seeking to set aside the whole transaction of which it formed a part. In *Neale* v. *Day* (*i*), Vice-Chancellor Page-Wood, while following the previous case, seems to have gone somewhat further. In the case before him, an attorney being in insolvent circumstances had assigned the goodwill of his business in consideration of a sum of money paid down, and an annuity secured by bond to be paid to his wife for life, with remainder to himself for life. It was held that, as against creditors, the settlement of the annuity was fraudulent and void, and that the annuity should be paid to the creditors. It may be noticed, that in the event of the bankruptcy of the attorney the creditors could not have obtained the value of this goodwill, for it could not have been assigned by the trustee in bankruptcy, inasmuch as an attorney's practice has no goodwill apart from the individual who carries it on, and it can only be assigned by the attorney himself by introducing and recommending the assignee, and by also abstaining from practising. The creditors cannot compel the bankrupt to undertake these duties or to enter into a covenant not to compete, but it would seem that where he is induced by false representations of the law to enter into such a contract, the courts will restrain him from all attempts to infringe it (*j*).

Even though creditors could not have obtained the value of the goodwill itself.

Apart from such a contract, the bankrupt has just the

Rights of bankrupt.

(*i*) 28 L. J. Ch. p. 45; and see *Whitmore* v. *Mason*, 2 J. & H. 204; *Wilson* v. *Greenwood*, 1 Swanst. 471.

(*j*) *The Buxton, &c. Publishing Co.* v. *Mitchell*, 1 C. & E. 527. And see *Clarkson* v. *Edge*, 33 L. J. Ch. 443.

same rights after the sale by his trustee as any other vendor of goodwill, without more. He may set up a similar business in the neighbourhood and solicit his old customers publicly or privately, but he must not do anything to represent that it is the old business that he carries on (*k*). At one time it was considered that while these rights remained to a bankrupt that a vendor of goodwill impliedly agreed to relinquish them; but since *Pearson* v. *Pearson* (*l*), it is clear that the rights of both are precisely similar.

Trustee may sell business to the bankrupt.

The trustee has also power to sell the goodwill of the business to the bankrupt or to his friends for his benefit. This was decided in *Ritson* v. *Hardwick* (*m*), under the Bankruptcy Act of 1869 (*n*), and Willes, J., in his judgment, remarked: "Having had much experience in bankruptcy, I have seen the advantage of giving the debtor a chance of getting back the business, especially where it is one which depends upon the personal influence or skill of the individual. In many cases a higher price might be obtained from him than a stranger would be willing to give" (*o*).

Bovill's Act.

It may be noticed here incidentally that if a purchaser of the goodwill of a business becomes bankrupt or insolvent, where the consideration for the purchase has been that he pay the vendor an annuity or share of the profits of such business, then the vendor, although by reason merely of such receipt becomes neither a partner nor subject to the liabilities of the purchaser, yet he shall not be entitled to recover any such profits as aforesaid until the claims of the

(*k*) *Crutwell* v. *Lye*, 17 Ves. 335; *Hudson* v. *Osborne*, 39 L. J. Ch. 79; *Walker* v. *Mottram*, 19 Ch. D. 355; *Smith* v. *Cropper*, 10 App. Cas. 249.

(*l*) 27 Ch. D. 145.

(*m*) L. R. 7 C. P. 473.

(*n*) 32 & 33 Vict. c. 71, s. 25, sub-s. 6.

(*o*) Page 478.

other creditors of the said trader for valuable consideration in money or money's worth have been satisfied (*p*).

## Sect. II.—*Alienation upon Death.*

An asset in the hands of an administrator.

As soon as it is established that what is called goodwill can, in certain cases, exist independently of the person who has carried on the business, it follows that, in such cases, it remains and is of value after that person's death. The law, therefore, regards it as an asset in the hands of an administrator, and also as a subject capable of being bequeathed (*q*). Indeed, it was in this respect that the question of goodwill seems first to have come before the Courts, except, of course, as regards agreements in restraint of trade. Thus, in *Giblett* v. *Reade* (*r*), decided in 17 Geo. II., Lord Chancellor Hardwicke held, that the shares of a deceased partner in a newspaper were assets in the hands of his representative; and in *Worrall* v. *Hand* (*s*), decided in 31 Geo. III., the common law courts adopted the same principle, Lord Kenyon holding that the money received by the executrix of a publican for the goodwill of a public-house, the trade of which she had sold, was assets in her hands.

Questions on this part of the subject have, however, risen almost wholly in connection with partnerships, and the subject will therefore more conveniently fall to be treated in the next section.

(*p*) 28 & 29 Vict. c. 86, ss. 4, 5.
(*q*) *In re Henton*, 30 W. R. 702; *Blake* v. *Shaw*, Johns. 732, 733; *Robertson* v. *Quiddington*, 28 Beav. 529. And see Chap. V. sect. 2, on "Bequest."
(*r*) 9 Mod. 459.
(*s*) 1 Peake, N. P. 105.

## Sect. III.—*Goodwill on the Dissolution of a Partnership without Articles.*

When a firm is dissolved, if the partners have neglected to provide by agreement for the distribution of its effects, the Courts will require them to be distributed according to certain definite rules which have been from time to time laid down. Among the possible effects the Courts include the goodwill of the firm, which is frequently a valuable asset, and one which will be protected for the benefit of all the partners.

Goodwill an effect of a partnership.

Its value, of course, varies considerably with different circumstances, and in estimating it the fact must not be forgotten that one or more of the partners may at once set up a rival business of a similar kind, and enter into competition with the purchaser of the goodwill of the firm. On this point there never has been any doubt in English law (*t*), although doubt has arisen as to their power to solicit and deal with their old customers—a question for the present decided in the affirmative by *Pearson* v. *Pearson* (*u*). In some cases, by express agreements between the partners, and in others by the interpretation of the articles, partners have been restrained from setting up a rival business after the firm has been dissolved, but with these we are not here concerned.

In all questions, however, arising in this way, care must be taken to determine whether the goodwill is of such a character that it can be regarded as an asset at all; thus, in the case of businesses in which the custom is due wholly to the personal qualities of those who have carried

In certain cases it may not be of value on a dissolution.

(*t*) *Cooke* v. *Collingridge*, 2 Coll. on Partnership, p. 215; *Crutwell* v. *Lye*, 17 Ves. 335; *Crawshay* v. *Collins*, 15 Ves. 218; and see cases in Chap. II.

(*u*) 27 Ch. D. 145.

it on, as in the case of a profession (*v*) or trade requiring skill (*w*), it is not usually an asset. Then, again, in the case of trades in which it usually exists as an asset, circumstances may have rendered it valueless, as, for example, the insolvency of the firm at the time of dissolution (*x*).

Where an effect must it be sold for the benefit of all.

Assuming, however, that goodwill, strictly speaking, exists, it may be laid down as a general proposition that, in the absence of provisions, when a partnership is dissolved the goodwill of the firm is an asset belonging to all the partners, and, if necessary, it must be sold for the benefit of all (*y*). The Court will further interfere, if necessary, to protect it until it can be sold; and if it passes into the hands of one or more of the partners to the exclusion of the others, by reason of their getting possession of the stock or premises, or by any other means, the Court will hold them liable to the firm for its value, and will estimate that value according to what it would have produced if valued in the most advantageous manner at the proper time (*z*).

*Featherstonehaugh* v. *Fenwick*.

The principle, that on a dissolution of a partnership all the property belongs equally to the partners, and that it must, if necessary, be sold for the benefit of all, was laid down in *Featherstonehaugh* v. *Fenwick* (*a*)—a leading case

(*v*) *Austen* v. *Boys*, 2 De G. & J. 626; *Arundell* v. *Bell*, 52 L. J. Ch. 437; and see Chap. III.

(*w*) *Davies* v. *Hodgson*, 25 Beav. 177; *Bond* v. *Milbourn*, 20 W. R. 197. In this connection the reader is referred to Chap. II., where the various items which pass under goodwill are fully discussed.

(*x*) *Simpson* v. *Chapman*, 4 De G. M. & G. 154; *Willet* v. *Blandford*, 1 Hare, 253; *Broughton* v. *Broughton*, 44 L. J. Ch. 526; *Wedderburn* v. *Wedderburn*, 22 Beav. 84.

(*y*) See Lindley on Partnership, 5th ed. p. 444; and cases *infra*.

(*z*) *Mellersh* v. *Keen*, 28 Beav. 453; *Smith* v. *Everest*, 27 Beav. 446; *Parsons* v. *Hayward*, 31 L. J. Ch. 666.

(*a*) 17 Ves. 298; and see *Clements* v. *Hall*, 2 De G. & J. 173; *Clegg* v. *Edmundson*, 8 De G. M. & G. 78—787.

on this subject. It was decided by Grant, M. R., in 1810. In this case two of three co-partners had dissolved the firm, and had insisted on taking over the share of the third at a valuation. They had also obtained clandestinely the lease of the premises in which the firm had carried on its business, and they continued to trade with the joint property. In this way they practically secured for themselves the goodwill of the business. The Master of the Rolls, however, ordered a general sale and account of the joint property, holding that two or more partners could not insist on taking the share of a third at a valuation; and he further decided that the clandestinely-obtained lease was to be considered as held in trust for the partnership, and that it must be accounted for as joint property, on the ground that the rights of the partners to have the whole concern wound up by a sale and a division of the produce were at the time of the dissolution precisely equal, and if the lease was not brought to sale along with the other partnership stock, they would be by no means on equal terms.

Collyer, in his Treatise on Partnership, sums up the law in this connection, as it stood in his time, as follows :—"It seems clear," he says, "upon authority as well as principle, that, whatever be the nature of his property, if it can be shown that a settlement of accounts would be most beneficial to the parties, such a sale will be decreed" (*b*). And further on he continues, "that although the goodwill of a trade is not a commodity upon which any definite price can be put, yet it will be considered to enhance the value of the effects on which it is attendant, and will therefore be included in a decree for a sale of those effects. Moreover, as it cannot be taken at a separate valuation, the sale will

(*b*) 2nd ed. p. 215.

be so adjusted that an accurate notion of its worth shall be impressed upon the mind of the purchaser." This latter effect is accomplished by giving notice of the fact that the old partners may carry on a similar business, and that they may be allowed to bid at the sale; and information has also been given as to the amount of the profits and the names of the customers (*c*).

Principle generally accepted.

This rule, as there laid down, has been accepted and followed in England, Scotland, and the United States, and the goodwill of a dissolved partnership, whether it consisted in the advantage attaching to the possession of the premises or of the stock, to the use of the name, or to the use of the trade marks, or to any or all of these combined, has been held to be a valuable asset of the partnership, in the value of which all the quondam partners were entitled to share (*d*).

Cases of dissolution when all partners alive.

Thus, in *Mellersh* v. *Keen* (*e*), where the business was that of banking, and where, upon a dissolution, certain of the partners had obtained the sole right to issue the notes and the right to the possession of the firm's property, Romilly, M. R., held that they were to be made accountable for the goodwill as far as it attached to the premises, the books of the partnership, and the accounts of the customers; and the Master to whom it was referred assessed its value at one year's average nett profits.

Similarly, in *Pawsey* v. *Armstrong* (*f*), Kay, J., held that in the case of a miller's business, that, although the mill and premises belonged to one partner, there was still a

(*c*) *Cooke* v. *Collingridge*, 27 Beav. 456; and see cases *infra*.

(*d*) *Reynolds* v. *Bullock*, 44 L. J. Ch. 773; *Harper* v. *Pearson*, 3 L. T. N. S. 547; *England* v. *Curling*, 8 Beav. 129; *Condy* v. *Mitchell*, 37 L. T. N. S. 268, 766; *Marshall* v. *Marshall*, 1816 (Sc.), Decisions of Court of Session, p. 82.

(*e*) 28 Beav. 453.

(*f*) And see *Walker* v. *Hirsch*, 27 Ch. D. 640.

goodwill to be sold, and he directed the sale of the business as a going concern, allowing either partner to bid.

In *Palmer* v. *Mallet* (*g*), a covenant in an agreement by an assistant to a co-partnery of two physicians and surgeons was held to be joint and several, and that, upon the dissolution of the partnership, as both partners were entitled to the benefit of the contract, it was a breach of the contract for the covenantee—the defendant—to become assistant to one of them, and he was accordingly restrained. There seems no reason, however, why the benefit of this covenant, being a valuable asset of the partnership for the protection of its goodwill, should not have been treated as other assets and brought to a sale, when either of the partners might have purchased it. But in the absence of any arrangement of this kind, the judgment was in accordance with the general rule, that the partners had equal rights.

In *Bradbury* v. *Dickens* (*h*), the whole of the goodwill was attached to the name of a periodical called "Household Words." The defendant, the famous Charles Dickens, had been editor and joint proprietor with the plaintiffs, but owing to disputes the partnership had been dissolved, and the defendant had announced that the publication would be discontinued. Upon a bill to restrain him, it was held that he was not entitled to do this, for that the right to use the name must be sold for the benefit of all the partners, it being part of the partnership assets, but he was allowed to advertise the discontinuance of the publication as regarded himself. The right to use the name was sold by auction, and, although Dickens had started a similar periodical called "All the Year Round," it is interesting to note that the price obtained for it was

(*g*) 36 Ch. D. 411. (*h*) 27 Beav. 53.

no less than 3,550*l.*, due partly, perhaps, to the fact that Dickens bade for it himself (*i*).

So, again, in *Banks* v. *Gibson* (*k*), upon the dissolution of a partnership the assets of a partnership were divided, but no arrangement having been come to as to the name or style, it was held that each partner was entitled to the use of it. Romilly, M. R., said: "The name or style of the firm of 'Banks & Co.,' in which the defendants had been engaged for a term of fourteen years, was an asset of the partnership, and if the whole concern and goodwill of the business had been sold, the name, as a trade mark, would have been sold with it. If, by an arrangement, one partner takes the whole concern, there must be a valuation of the whole, including the name or style of the firm. But if the partners merely divide the other partnership assets, then each is at liberty to use the name, just as they did before" (*k*). As pointed out, however, in Lindley on Partnership (*l*), the question of the risk to which the other partners would be exposed by the use of the name seems to have been overlooked in this case; but the principle is clear, and this difficulty might easily be obviated by the use of the words "late of" or "formerly" before the old name (*m*).

In *Bury* v. *Bedford* (*n*), a trade mark was similarly held to be a partnership asset, which passed under a creditor's deed.

(*i*) See per Romilly, M. R., 28 Beav. p. 455.

(*k*) 34 Beav. 566; and see *Dart* v. *Turpin*, 2 John. & Hem. 139.

(*l*) 4th ed. p. 863, note (*p*).

(*m*) *Churton* v. *Douglas*, Johns. 174; and see *Scott* v. *Rowland*, 20 W. R. 508; *Scott* v. *Scott*, 16 L. T. N. S. 143; *Levy* v. *Walker*, 10 Ch D. 436; *Dence* v. *Mason*, 41 L. T. N. S. 573.

(*n*) 4 De G. J. & S. 352; and see *Hall* v. *Burrows*, 4 De G. J. & S. 150; *Hine* v. *Lart*, 10 Jur. 106; *Rogers* v. *Nowill*, 3 D. M. & G. 614; and see numerous cases in Sebastian on Trade Marks.

Disposition of goodwill when firm dissolved by the death of one partner.

In the cases with which we have so far dealt, the dissolution of the partnership has taken place during the lives of all the partners. When the dissolution is caused by the death of one of the partners, it seems now clear that the same general principles apply for the disposal of the goodwill as in other cases of dissolution where no agreement concerning it has been made by the partners. There has been some doubt, however, entertained as to whether the goodwill of a business survived to the remaining partner or partners, or whether some share in it belonged to the estate of the deceased. There exist clearly contrary decisions, but all the later cases hold that the goodwill does not survive, and that if a surviving partner obtains the benefit of it, he must account to the estate of the deceased co-partner. The question has been further complicated by decisions in the case of partnerships of professional men, to the effect that the goodwill belonged to the surviving partners (*o*), when, in fact, in those cases, there was no goodwill to survive in what, from Lord Eldon's time, has been regarded as the strict legal meaning of the word. Doubtless the surviving partners will reap some advantage from the death of their co-partner, but this benefit they receive is not by force of law, but is a mere natural advantage. The partners, in fact, in such cases simply acquire the same benefits as they would do from the death of a rival in the neighbourhood. And it would be absurd in such a case to consider them as liable to the personal representatives of the deceased for such advantages. In either case there seems no reason why the widow or executor of a deceased professional man, whether a partner or otherwise, should not introduce and

Same principle as when all partners alive.

In professional partnerships.

(*o*) *Farr* v. *Pearce*, 3 Mad. 74; and see *Austen* v. *Boys*, 2 De G. & J., per Lord Chelmsford, pp. 626—635.

recommend a new comer to the old customers, and thus deprive them, in part, of this advantage (*p*).

Applying, then, the same principles to the case of a dissolution by death, it follows that the surviving partners are clearly entitled to carry on a similar business as before, and to take every advantage they can of their acquaintance with the old customers; but it would seem that the personal representatives have a clear right to have the business of the firm sold separately, and to receive the share of the price, in proportion to the share of the deceased in the business (*q*). Inasmuch as the surviving partners have a great interest that the business should not be sold, they usually take it over at a valuation, and a sale is seldom ordered by the Court. Not unfrequently, however, the survivors have taken advantage of their position, and have secured for themselves all the property by which the goodwill could be conveyed; and many actions have been brought by personal representatives of deceased partners to compel their former co-partners to account for the value of the goodwill thus wrongfully obtained. In such cases the Courts have ordered that the value of the goodwill, if any, at the time of the death of the partner be ascertained, and that his share, with interest thereon at five per cent. from the date of the death, be paid to his representatives (*r*).

Surviving partners must account for the goodwill if they take possession of it.

The time when the valuation must be made is sometimes important. Thus, in the case of *Broughton* v. *Broughton* (*s*), the business was insolvent at the date of the decease of the partner. The surviving partner, who

The valuation to be made at the date of the death.

(*p*) *Bain* v. *Monro*, 5 Rettie, 416.

(*q*) *Cooke* v. *Collingridge*, 27 Beav. 456; Coll. on Partnership, p. 215; *McDonald* v. *Richardson*, 1 Giff. 81; and see cases *infra*.

(*r*) *Giblett* v. *Reade*, 9 Mod. 459; and cases *infra*.

(*s*) 44 L. J. Ch. 526.

was also executor, carried it on for eight years, and eventually sold it for 1,700*l.*; but it was held that this sum belonged to the surviving partner and not to the deceased's estate, inasmuch as the goodwill at the date of the decease was valueless.

In estimating the value of the goodwill, the advantages attaching to the premises, and to the stock, and to the right to use any trade marks there may be, and possibly also to the trade name, must be taken into account; but the rights of the surviving partners and the personal representative of the deceased respectively to the use of the firm name, do not seem to be quite clearly settled.

As there have been conflicting decisions upon the question of goodwill surviving, and as the subject occurs not unfrequently, it is proposed here to discuss the principal cases at greater length.

Review of cases.

In *Giblett* v. *Reade* (*t*), Lord Hardwicke clearly held that partnership shares in a newspaper business were assets in the hands of an executrix; but Lord Rosslyn, in *Hammond* v. *Douglas*, in 1800 (*u*), also clearly held that the goodwill of a trade carried on in partnership, without articles, survives, and is not partnership stock. The propriety of this ruling was, however, doubted by Lord Eldon in *Crawshay* v. *Collins* (*r*), and was certainly not followed by him in *Cooke* v. *Collingridge* (*x*) in 1824, a case not properly reported, but it is clear from the order that Lord Eldon considered the deceased partner's share in the goodwill as a matter of some value to be regarded in the sale of the business. In *Lewis* v. *Langdon* (*y*), however, Shadwell, V.-C., followed *Hammond* v. *Douglas*, and upon the ground of survivorship restrained the executors from using the

(*t*) 9 Mod. 459.
(*u*) 5 Ves. 539.
(*v*) 15 Ves. 218.
(*x*) 27 Beav. p. 456, *n.*
(*y*) 7 Sim. 421.

name of the old firm. Lord Romilly, M. R., however, had to deal with the same point on more than one occasion, when he followed Lord Eldon. In *Wedderburn* v. *Wedderburn* (*z*), he said: "The goodwill of a trade, although inseparable from the business, is an appreciable part of the assets of a concern, both in fact and in the estimation of a Court of Equity. Accordingly, in reported cases, Lord Eldon held that a share of it properly, and as of right, belonged to the estate of a deceased partner. It does not survive to the remaining partners, unless by express agreement." And further, "I am of opinion, then, that both on principle and on the authority of the decided cases, and on the ordinary rules of common sense, I must, whenever there is a reputation and connection in business constituting goodwill, treat that as part of the concern" (*a*). So again, in *Smith* v. *Everett* (*b*), he said: "I entertain no doubt that if two persons carry on business, and one of them dies, a share in the goodwill (where it is of any value at all) forms part of the estate of the deceased partner, and his share of it is in proportion to his interest in the concern. But this must be limited by the rights of the surviving partner, and the consequences which naturally follow from the death of one of the partners."

*Smith* v. *Everett.*

In the last case the partners had carried on the business of bankers, having had the right to issue notes under 7 & 8 Vict. c. 32. Under that statute this right belongs beneficially to the surviving partner. The survivor in this case was also the owner of the premises where the business had been carried on, and after his partner's decease he had sold the whole business for 10,000*l.* This action was brought

(*z*) 22 Beav. 84.
(*a*) Page 104.
(*b*) 27 Beav. 446—450.

by the widow of the deceased to recover part of this, and it was held that the deceased's estate was entitled to a share of so much of the 10,000*l.* as was attributable to the goodwill; and special inquiries were directed to ascertain the value, having regard to the fact—1st, that the partnership premises belonged to the survivor; 2nd, that he had the right to carry on the business; 3rd, that the sole right of issuing notes belonged to him. Lord Romilly did not appear to consider that this would be of very great value; but the result of the inquiry was that the valuation of the goodwill, apart from the rights of the survivor, was put at 4,000*l.*, of which the plaintiff received half, as due to the estate of the deceased.

In *Hall* v. *Burrows* (*c*), Lord Chancellor Westbury also held that the goodwill of a partner was a distinct subject of value, and as such to be included in any sale or valuation to the surviving partner, and the trade mark was held to pass with it (*d*).

Firm name.

As regards the firm name, it would follow that the surviving partners would have a right to it on the purchase of the goodwill by them; but if no arrangement was come to as to the goodwill, it is presumable that both the surviving partners and the personal representatives would have an equal right to the firm name, in so far as the use of it by either did not injure the others by subjecting them to the risk of being sued. The surviving partners have been held to have the right both to the firm name and to the trade mark (*e*); but in *Lewis* v. *Langdon* (*f*), of which, however, the law is doubted, the executors were restrained from using the old firm name.

(*c*) 4 De G. J. & S. 150.

(*d*) And see also *Johnson* v. *Helleley*, 34 Beav. 63; *England* v. *Downs*, 6 Beav. 269.

(*e*) *Webster* v. *Webster*, 3 Sw. Rep. 490, n.; *Hine* v. *Lart*, 10 Jur. 106. See Lindley on Partnership, 5th ed., p. 445.

(*f*) 7 Sim. 421.

Protection of the goodwill until sold or valued.

Upon a dissolution of a firm the Courts will protect the goodwill until it can be sold or valued, whether the dissolution be brought about by lapse of time, mutual agreement, decree of Court, death, or bankruptcy. The question has usually been raised in this country in connection with dissolutions where there have been provisions in the partnership agreement for disposing of the articles; but it has clearly been expressed by the Courts, and the principle is the same, whether under agreement or not, that they will interfere to restrain a partner, after a dissolution, from doing acts of waste, destruction, or intentional injury to the goodwill of the partnership until it can be sold or valued (*g*). Shadwell, V.-C., in *Lewis* v. *Langdon* (*h*), certainly expressed a contrary opinion, but this opinion has not been approved, and it appears from the remarks of Lord Chancellor Westbury, in *Hall* v. *Burrows* (*i*), that the Master of the Rolls had in that case directed a sale of an ironworks business and the goodwill of the partnership, and until this could be done that he had appointed a manager to continue and conduct the business. It is not uncommon, in the winding-up of a company, for the Courts to appoint a receiver and manager to carry on the business until it can be sold for the benefit of the creditors (*j*).

In *Evans* v. *Hughes* (*k*) a surviving partner was restrained from carrying on the business under any but the old name until he elected to take it over, or have the value of the goodwill ascertained.

(*g*) *Turner* v. *Major*, 3 Giff. 442; *Marshall* v. *Watson*, 25 Beav. 501; *Coften* v. *Horner*, 5 Price, 537; *Bradbury* v. *Dickens*, 27 Beav. 53; and see cases in the United States, *infra*.

(*h*) 7 Sim. 421.

(*i*) 4 De G. J. & S. 150, 153.

(*j*) *Gardner* v. *London, Chatham & Dover Rail. Co.*, 2 Ch. App. 201, per Cairns, L. J., pp. 211, 212; *In re Manchester & Milford Rail. Co.*, 14 Ch. D. 645.

(*k*) 18 Jur. 691; and see *Vyse* v. *Foster*, 8 Ch. App. 309; 7 E. & I. App. 318, 329.

Dissolution of firm by bankruptcy.

In the case of the bankruptcy of a partnership firm, the same principles would apply as in the case of an individual, although, very frequently, the value of the goodwill would be very small. If one partner of a firm became bankrupt, the trustee in bankruptcy would have a right to an account and valuation of bankrupt's property, including his share in the goodwill of the firm at the date of the bankruptcy (*l*). The right of a bankrupt partner to start again in the same line of business is the same as in other cases, unless he is prevented by his agreement with the other partners.

Cases in Scotland.

In Scotland, the goodwill of a partnership is treated upon the same principles as in England. The matter seems to have arisen mainly in connection with the premises where the business has been carried on. Thus, in *Marshall* v. *Marshall* (*m*), decided in 1816, it was held, in the case of a dissolution of a firm of jewellers, that if the partners could not agree as to the disposal of the shop in which they had carried on their trade, it must be exposed for sale; and in *Stewart* v. *Stewart* (*n*) that in dividing partnership property any partner is entitled to have it brought to a public sale, and is not bound to fix a value at which he will take his own or his partner's shares, and this although several years had elapsed since the firm had been dissolved, its affairs not having been wound up. In the case of a dissolution of a partnership by the death of a partner, his share of the goodwill has been held to belong to his estate. In *McCormick* v. *McCubbing* (*o*) it

(*l*) *Crawshay* v. *Collins*, 15 Ves. 218.

(*m*) Decisions of Court of Session (1816), 19 F. C. 101; and see *McWhannell* v. *Dobie*, 8 S. 914 (1830).

(*n*) 14 S. 72 (1835).

(*o*) 1 S. 541 (1822); and see *Aitken's Trustees* v. *Shanks*, 8 S. 753 (1830).

was held that the goodwill of a newspaper was a valuable privilege or property transmissible *inter vivos* or to heirs, and that if upon the death of a partner in a company or firm publishing a newspaper, the other partners desire to continue the publication, but refuse to purchase the goodwill, then, like the other rights of the deceased, it must be sold for behoof of his representatives.

Cases in the United States.

In the United States, also, the goodwill of a partnership is treated also upon similar principles to those adopted in this country. Thus, in the case of *Mitchell* v. *Read* (*p*), in the New York Commission of Appeals, the Court, after most careful consideration of an apparently exhaustive list of authorities, decided that one member of a co-partnership cannot during its existence, without the knowledge of his co-partners, take a renewal of a lease for his own benefit of premises leased by the firm upon which it has made valuable improvements, creating a goodwill and enhancing the rental. And it does not matter that the renewal lease does not begin until after the co-partnership has expired by its own limitation. A lease so taken by one partner in his own name, it was decided, enures to the benefit of the firm, and the partner in whose name it is taken can be required to account to his co-partners for its value; and further, that the fact that the landlord would not have granted the new lease to the other partners or to the firm was immaterial. The business in dispute, it may be noticed, was that of an hotel, where the goodwill for the most part attached to the premises. Earl, C., in his judgment, cited with approval the English case of *Featherstonehaugh* v. *Fenwick* (*q*), already referred to, and said: "The law recognizes the renewal of the lease as a

(*p*) 61 N. Y. 123 (1874), and 19 Hun. 418; and see *Struthers* v. *Pearce*, 51 N. Y. 357.

(*q*) 17 Ves. 298.

reasonable expectancy of the tenants in possession, and in many cases protects this expectancy as a thing of value." "The defendant was in possession as a member of the firm, and the firm owned the goodwill for a renewal, which ordinarily attaches to the possession; he took advantage of his position during the partnership secretly to obtain the new leases. He must hold them for the firm" (*r*).

On death of one partner.

In the case of dissolution by death, it was held, in *Dougherty* v. *Van Nostrand* (*s*), that the goodwill and the lease of the partnership premises did not survive to surviving partners, but were partnership property. The question as to goodwill surviving seems to have arisen mainly in connection with the firm name. In *Fenn* v. *Bolles* (*t*), it was held that the partnership name either died with the firm, or was the common property of the surviving partners and the representative of the deceased partner; and in this case the surviving partner was restrained from trading in the old name. In Massachusetts, by the General Statutes (*u*), no person can use the name of a person previously connected with a trading firm without the consent in writing of such person or his personal representative; but the sale of his share in the goodwill of the business would seem to imply this consent (*w*). Thus, for example, under the above statutory provision, it was decided that when a person had been in partnership with another, and had died, and the administrator had conveyed to a third party the right to use his name, the administrator and this third party might join in a bill to

(*r*) Page 133.

(*s*) Hoff. 68.

(*t*) 7 Abb. Pr. 202; and see *Huwer* v. *Damenhoffer*, 82 N. Y. Rep. 499; *Petersen* v. *Humphrey*, 4 Abb. Pr. 394.

(*u*) C. 56, §§ 3 and 4.

(*w*) See *Morse* v. *Hall*, 109 Mass. 409; *Carmichael* v. *Latimer*, 11 R. I. 395; *Drake* v. *Dodsworth*, 4 Kan. 159; *Soheir* v. *Johnson*, 111 Mass. 238; Story on Partnership, § 100, *n*.

restrain the surviving partner from continuing to do business under the old firm name (*x*).

Protecting the goodwill until valued.

As regards protecting the goodwill after a dissolution until the business can be sold, Chancellor Walworth, in *Marten* v. *Van Schaick* (*y*), held that, on a dissolution of a partnership, it is a matter of course to appoint a receiver if the parties cannot agree among themselves as to the disposition and control of the property; and, where it is necessary to preserve the goodwill of the business, the receiver may be directed to carry it on under the direction of the Court until a sale can be effected; and he appointed a manager to carry on the business in this case, the business being that of a political newspaper; but he ordered it to be sold as soon as possible. In *Williams* v. *Wilson* (*z*), Vice-Chancellor Sandford held that the goodwill of a partnership was a valuable interest, belonging equally to all the partners, recognised and protected by the law; and in the case before him he appointed a receiver to carry on the business until it could be sold, the business being that of a private insane hospital.

## Sect. IV.—*The Goodwill of a Statutory Undertaking upon a compulsory Sale.*

Of late years it has become not uncommon for Parliament to insert in the private Bills promoted by gas and water companies a provision giving the local authorities power to purchase compulsorily the undertaking. Local

(*x*) *Rogers* v. *Taintor*, 97 Mass. 291; and see *McGowan* v. *McGowan*, 22 Ohio St. 370.

(*y*) 4 Paige's Rep. (N. Y.) 479.

(*z*) 4 Sand. Ch. (N. Y.) 379.

corporations have also obtained this power by bills promoted by themselves. The Public Health Act of 1875 (*a*) also empowers sanitary authorities to buy up the land, premises, and works, and all the rights, powers and privileges of gas and water undertakings; but as such transactions will be voluntary, the parties thereto can sufficiently guard their own interests. In the case of a compulsory sale, however, in the absence of express provisions as to what is to be considered in fixing the price, questions have arisen, before the arbitrator appointed for that purpose, as to what is to be included and what is not. Something in the nature of goodwill not unfrequently turns up as a matter of contention. It has been doubted, for example, whether anything of this nature should be paid for at all, and it has been contended that simply the value of the land, premises, stock and plant should be taken into account in fixing the price. Each case, however, must be determined according to the terms of its own Act; but inasmuch as these companies have obtained their rights and their customers by a large outlay of money, and after incurring considerable risk, it must always appear to be the equitable view that the undertakings ought to be valued as going concerns. The price would usually be calculated upon their net profits at the rate of so many years' purchase, the number varying with the circumstances in each case. If the company is a flourishing one, the sum allowed for goodwill would be by far the largest item in the account, and if the shareholders were deprived of this, it would entail a very serious loss to them.

To be valued as a going concern.

But in fixing the manner in which the goodwill has to be calculated, other questions arise. To calculate it upon the net profits of a young company, the resources of which

Prospective value of the works to be taken into account.

(*a*) Sects. 62 and 162.

are by no means fully developed, would be most unfair, and an allowance should certainly be made for its capability of increasing its income. In determining this allowance, it must be remembered that the legislature limits the dividends paid to the shareholders by arranging that the rates charged to the public shall vary with the dividends. With that limitation the full prospective value of the works and undertaking should be paid for. The prospective value is to be calculated, however, according to the existing works or powers of the company.

Probability of Parliament granting extended powers not be taken into account.

It has been argued that there should also be taken into account the probability of Parliament passing other measures to allow for its further development. In a flourishing district, where the resources of the neighbourhood attract the population, causing thereby an increased demand for gas and water, and a consequent necessity for the extension of the works of the undertaking, it would at first sight appear that the company already planted in the community had the greatest chance of obtaining new measures. It might well be contended, therefore, that this probability was in fact of value.

The probability and expectancy that a landlord will renew a lease upon its expiration, undoubtedly influences the price obtainable for the goodwill of a business, and this chance of renewal has been recognized as of value, both in Courts of Law and in Equity (*b*). Upon analogy it might therefore be argued that, in the absence of any provision in the statute to the contrary, the chance of Parliament passing further measures on behalf of a company ought to be considered as of appreciable value in estimating the price on a sale. But, as between landlord

(*b*) *Vernon* v. *Lee*, 5 Brown's Parl. Cas. 10; *Worrall* v. *Hand*, Peake, N. P. 105; *Hungerford Market Co., Ex parte Gosling*, 4 B. & Ad. 592.

and tenant, the chance of renewal is of no value, and Parliament, in legislating for the benefit of the community, is pretty much in the same position as the landlord, and is not, therefore, called upon to take this into account, and the very fact of the legislature passing a Bill allowing compulsory purchase negatives the idea (*c*). In the case of a voluntary sale it might be otherwise.

(*c*) See Balfour Browne on the Compulsory Purchase of the Undertakings of Companies.

# CHAPTER V.

## THE VOLUNTARY DISPOSITION OF GOODWILL.

As we have seen, goodwill is a word used to include a number of rights by means of which a business connection can be transferred from one person to another, and as these rights are not dependent on the person, and of value, they may be the subject of mortgage, bequest, gift, or sale. These rights are of value only, however, when connected with a continuing business; therefore they cannot be assigned without the business. Thus, if a surviving partner had the right, upon payment of a certain sum, to succeed to the business of the firm, it would be absurd to bequeath the goodwill to another.

### SECT. 1.—*Mortgage of Goodwill.*

When it passes with the premises.

When goodwill is local, and increases the value of land or premises, it passes to the mortgagee upon his entering into possession, and he is entitled to the benefit arising therefrom (*a*). Sometimes, however, the goodwill of a business is made a special subject of mortgage along with the premises and fixtures. It has not been very clearly decided

(*a*) See Chap. VI. Sect. 1.

as to what would pass under such a mortgage. It seems that the mortgage of a goodwill is not included under the Bills of Sale Acts; and it has been held that the mortgage of a share and interest in a partnership business, which included the goodwill, was a charge upon a *chose in action*, and was not affected by the Bankruptcy Act of 1869, or by the Bills of Sale Act of 1854 (*b*). Bills of Sale Act.

The most common case of mortgage of goodwill occurs in connection with hotels and public-houses, when it is mortgaged along with the premises. The mortgagee, on entering into possession, thus becomes entitled to have the licence assigned to him, and to have a receiver and manager of the business appointed (*c*). He may apply for, and has a right to obtain, a renewal of a licence, and may appeal as a "person aggrieved" from a refusal of the justices to grant it (*d*). If the licence has been forfeited, and he takes no steps to obtain a new one, but sells the premises to a new occupier, his interest in the premises ceases, and he can make no claim if, afterwards, the previous occupier or his trustee in bankruptcy procure a new licence and sell it to the new occupier. In this last case the house and licence had been mortgaged, but the goodwill was not expressly mentioned (*e*). Mortgage of goodwill of an hotel.

The right to use the firm name has also been the subject of express mention in a mortgage of premises, goodwill, &c., but such a right can only be of value when the mortgagee, or possibly his assignee, intends to carry on the same business. In *Beazley* v. *Soares* (*f*), the premises, Mortgage of firm name.

(*b*) *In re Bainbridge, Ex parte Fletcher*, 8 Ch. D. 218.

(*c*) *Rutter* v. *Daniel*, 30 W. R. 801; and see *Day* v. *Lukke*, L. R. 5 Eq. 336; *Truman* v. *Redgrave*, 18 Ch. D. 547; 30 W. R. 421; and see *Smith* v. *Pearman*, W. N. (1888) p. 131.

(*d*) *Garrett* v. *JJ. of Middlesex*, 12 Q. B. D. 620.

(*e*) *Manifold* v. *Morris*, 5 Bing. N. C. 420.

(*f*) 22 Ch. D. 660.

goodwill, and right to use the firm name had been mortgaged twice. The first mortgagee sold his interest to the defendant, subject to the interest of the second mortgagees, the plaintiffs. These plaintiffs sought to restrain the defendant, who was carrying on the business, from using the old name until the sum due upon the second mortgage was paid. This, however, Mr. Justice Pearson refused to do, as the plaintiffs had never used the name, nor ever intended to use it, and they could have no interest in it apart from the business.



### Sect. 2.—*Bequest of Goodwill.*

The goodwill of a business may in many cases be disposed of by will, and the legatee thereof will be entitled to all the rights connected therewith in the same way as if he had purchased it (*g*). Testators must, however, exercise considerable care in making such bequests, so that the terms thereof may specify exactly what they mean to pass, and they must also transfer such other property as will enable the legatee to get the benefit of the bequest. Thus, under a bequest of the goodwill of a business, the testator's interest in the business premises will not generally be held to be included (*h*). Yet, in such a case, the goodwill may be wholly local, and the executors may demand from the legatee such a high rent for the premises that he will be deprived of any advantage to be obtained from the bequest. In the case of *Blake* v.

What passes under a bequest.

*Blake* v. *Shaw.*

(*g*) *Canham* v. *Jones*, 2 V. & B. 218.

(*h*) *In re Henton*, *Henton* v. *Henton*, 30 W. R. 702; *Farquhar* v. *Hadden*, L. R. 7 Ch. App. 1.

*Shaw* (*i*), for example, a testator bequeathed to the plaintiff "the plant and goodwill" of his business in Aldersgate Street. A question was raised as to whether this included the testator's interest in the lease of the house in which the business had been carried on. Only a few years remained of the lease, and it was held at a rack rent, so that it was practically valueless, except for any goodwill that might have attached to it. In these circumstances Page Wood, V.-C., held that the testator's interest in the lease passed under the gift in the will, the premises being necessary to the transfer of the goodwill. Had the executor been able to let the house at an increased rent, because of the goodwill of the business which had been carried on in it, then the legatee might possibly have been able to recover this extra value from them. This was the course that should have been pursued in *Robertson* v. *Quiddington* (*k*). In that case the testator, who had been a partner in a firm of tailors, carried on without articles, bequeathed his share of the goodwill to a legatee. But this goodwill, though possibly of value, could not be specifically conveyed, for a testator has no right, apart from agreement, to force upon his surviving partner either an executor or anyone else as a new partner. The legatee, notwithstanding that the executors had assigned the goodwill to the surviving partner, brought an action, with their consent, against the partner; but it was held that the goodwill could not be separated from the business, and that the remedy of the plaintiff, if any, was in a suit for a general administration of assets, where, if it should appear that the executors had realised anything by the sale, the plaintiff might obtain the value.

*Robertson* v. *Quiddington.*

Not unfrequently disputes have arisen as to whether or

(*i*) Johns. 732.

(*k*) 28 Beav. 529.

not the stock-in-trade passed with the goodwill; but it may be said generally that neither the stock-in-trade nor the capital employed passes unless specifically mentioned (*l*); the plant, however, may pass (*m*).

In partnership articles provision is usually made for the valuation and disposal of the goodwill upon the death of one of the partners, and will depend upon the construction of the provisoes in each case (*n*).

## Sect. 3.—*Sale of Goodwill.*

The purchase and sale of the goodwill of businesses is a matter of daily occurrence; even in those cases where it passes by operation of law to an administrator, trustee in bankruptcy, or otherwise, it has to be re-sold. The law on the subject can scarcely be said to be complicated, the difficulties having mainly arisen from the indefinite nature of the subject-matter, and from the parties not defining clearly what rights they wished to convey and what to retain. The Courts have, therefore, in the interpretation of these contracts, had imposed upon them the task of giving clear meanings to terms which, to the minds of the parties, conveyed only vague and indefinite ideas.

What passes on a sale of goodwill.

We have already discussed very fully in Chapter II. the respective rights of the purchaser and vendor upon the sale of the goodwill of a business without any covenants or stipulations. It may be convenient here to recapitulate shortly what these rights are. Firstly, then, the purchaser

(*l*) *Blake* v. *Shaw*, Johns. 732; *Delany* v. *Delany*, 15 L. R. Ir. 55; *Richardson* v. *Pilliner*, 50 L. J. Ch. 488.

(*m*) *Delany* v. *Delany*, *supra*.

(*n*) See *infra*, sect. 4.

acquires the exclusive right to carry on the old business, and to represent that it is the old business that he carries on, and this, it seems fairly well settled, includes the right to the trade marks, to the trade name, and to the benefit of agreements made by the vendor with employés, apprentices, former partners, and others for the protection of the business. Secondly, the vendor, though restrained from infringing these rights, may set up a fresh business of a similar nature in any situation, and he may publicly or privately solicit his old friends and customers. After the sale he is, in fact, in the same position legally as regards the business as any other member of the public. As has also been pointed out in Chapter III., when the business is dependent on the personal qualities of the vendor, as in the case of the learned professions, there is seldom anything of value to pass under these rights.

No writing required.

To transfer such goodwill, it does not appear that any writing is required. As, however, there is frequently some interest in land to be conveyed, as, for example, the possession of premises, it is necessary to have such writing or indenture as will comply with the Statute of Frauds and other statutes regulating the conveyance of real property (*o*).

Restraining covenants advisable.

In a sale of goodwill it is frequently advisable both to modify and to add to these rights. In order to do this it is as well that there should be a formal deed incorporating such covenants as are necessary to render the goodwill of value. Among these are usually included a covenant restraining the vendor from setting up a similar business so as to compete with the one he has sold (*p*). Some

(*o*) *Smart* v. *Harding*, 15 C. B. 652.

(*p*) *Scott* v. *Rowland*, 20 W. R. 508; *Chatteris* v. *Isaacson*, 57 L. T. 177; *Levy* v. *Walker*, 10 Ch. D. 436; and see *supra*, Chapter II. Such a stipulation, if for more than a year, must be in writing: *Davey* v. *Shannon*, 4 Ex. D. 81.

restriction should also be placed upon the purchaser's right to use the old name, so as to prevent the vendor incurring any risk of having an action brought against him for the debts of the new firm (*p*). The vendor may even retain the right to the firm name (*q*). A purchaser should also, if possible, acquire in most cases the old business premises, either from the vendor of the goodwill or from his landlord, and he should not neglect to inquire into the title; and a proviso might with advantage be inserted in the agreement that if the vendor cannot make a good title the contract of sale shall be void (*r*).

Sale of the goodwill of hotels, &c.

In the case of acquiring the goodwill of hotels and public-houses, the premises and the licence are the all-important matters. The sale of a public-house as a going concern will imply the transfer of the licence (*s*); but it is as well that purchasers of such a goodwill should insist upon a covenant requiring the vendor to comply with all the regulations necessary for the transfer of the licence along with the premises. If the vendor, then, cannot on the date fixed for the completion of the sale also transfer the licence, the purchaser will be entitled to repudiate his contract, and to recover back both his deposit and the expenses incurred by him in connection with the sale (*t*). Covenants restraining the vendor from setting up a rival business are seldom necessary in the case of public-houses; but in purchasing the goodwill of an hotel such a covenant may sometimes be advisable.

It would be impossible to go over all the different trades

(*p*) See last note.

(*q*) *Pearson* v. *Pearson*, 27 Ch. D. 145.

(*r*) *Spratt* v. *Jeffery*, 10 B. & C. 249; *Tweed* v. *Mills*, L. R. 1 C. P. 39.

(*s*) *Day* v. *Luhke*, L. R. 5 Eq. 336.

(*t*) *Cowles* v. *Gale*, L. R. 7 Ch. App. 12; *Claydon* v. *Green*, L. R. 3 C. P. 511; *Seaton* v. *Mapp*, 2 Coll. 556.

in which a goodwill may be sold, and to specify the different matters to which the purchaser should direct his attention. Such details are questions of fact rather than of law, and are known best to those engaged in the class of business the goodwill of which is proposed to be sold. Among the matters, however, to be noticed are the services of the employés of the vendor. Unless the vendor has previously stipulated with them that they shall not set up a rival business, the goodwill may be seriously injured by their so doing, and they cannot be required at the time of the sale to bind themselves not to compete (*u*). Employés.

In the case of businesses of a personal nature, as in that of a solicitor, or of a non-dispensing medical man, the period of time during which the vendor is to introduce his old clients or patients to the purchaser is a most important matter, and a covenant restraining the vendor from practising within such a distance as would enable him to compete with the purchaser is absolutely necessary (*x*). Upon a sale of a solicitor's practice it is usual also for the purchaser to take over all the papers and documents belonging to the clients, and to require that they shall be handed over; without the express consent of the client this, however, is illegal (*y*), and the vendor is bound to deliver them up to the client if he so desire. Even in the case of one of two partners buying out his co-partner, he cannot take over the business of a client who has employed the firm (*z*); and even in the case of the bankruptcy of one of two solicitors in partnership, the solvent partner is not entitled to the Sale of professional practices. Solicitor's practice.

(*u*) *Irish* v. *Irish*, 40 Ch. D. 49.

(*x*) See forms of covenants, Chap. VII.; and see Davidson's and Prideaux's Precedents on the purchase and sale of the goodwill of a business.

(*y*) Per Jessel, M.R., in *Arundell* v. *Bell*, 52 L. J. Ch. 537.

(*z*) *Cook* v. *Rhodes*, 19 Ves. p. 272, n.; *Earl Cholmondeley* v. *Lord Clinton*, 19 Ves. 261; *Griffiths* v. *Griffiths*, 2 Hare, 587.

possession of the papers of the firm, unless the clients consent (*w*).

The word "goodwill" should be used in conveying.

In agreements for the conveyance of the goodwill of a business it is also advisable to use the word "goodwill." This term has at least the merit of being more technical, and, therefore, capable of stricter definition than such terms as—"interest in the business" (*x*), "the establishment" (*y*), "property and effects in the business" (*z*), and such like. These words usually do convey the goodwill, but they have given rise to disputes; and in the construction of partnership articles in this connection there are conflicting decisions, arising mainly from the use of words having only vague meanings (*a*).

Value of goodwill.

The value of the goodwill of a business is not an easy matter to determine. It should be ascertained in each case by persons acquainted with the particular class of business in question, and attention should be paid as to what is really to be conveyed and what is not. In many cases, especially in professional practices, the goodwill is practically valueless if the vendor or his partner has the right to carry on a similar business, while, on the other hand, if they are restrained from so doing the value may be considerable. Thus, for example, in *Harrison* v. *Gardner* (*b*), an arbitrator awarded a retiring partner 500*l.* for his share of the goodwill in a cheesemonger's business on the understanding that he would not set up a rival business in the vicinity, and the Court, being of opinion that the goodwill would without this be practically valueless, admitted parol evidence to prove that the vendor had allowed the arbitrator to believe that he would not set up a rival

(*w*) *Davidson* v. *Napier*, 1 Sim. 297.
(*x*) *Pearson* v. *Pearson*, 27 Ch. D. 145.
(*y*) *Boon* v. *Moss*, 70 N. Y. 145.
(*z*) *Hall* v. *Hall*, 20 Beav. 139.
(*a*) See *infra*, sect. 4.
(*b*) 2 Madd. 198.

business in the neighbourhood. All such conditions should, however, be clearly brought home to the minds of the parties, so that their effect upon the value may be properly taken into account.

Basis of valuation.

The usual basis of valuation is the average net profits made during the few years preceding the sale. If the trader or partnership is insolvent or nearly so, the goodwill has frequently been regarded as nil (*c*).

Of professional businesses.

In medical practices the price of the goodwill, with the usual stipulations for introduction and restraint of competition, is usually estimated roughly at one and a-half year's profits. A solicitor's practice would bring about the same, or perhaps less; while the price of a share in a legal or medical practice is seldom calculated on less than two years' net profits (*d*). Other businesses of a personal nature must also be estimated according to the introduction given by, and the restraint put upon, the vendor. In the absence of these the value is comparatively little. Thus, in *Davies* v. *Hodgson* (*e*), the business of a tobacco broker was held to be too personal to be of value; and, in *Stewart* v. *Gladstone* (*f*), the Court doubted whether the goodwill of the business of commission merchants was of any value except, perhaps, there might be some value attaching to the firm name.

Of a banking business.

In *Mellersh* v. *Keen* (*g*) the value of the goodwill of a banking business was assessed at one year's average net profits. In *Smith* v. *Everett* (*h*) the goodwill of a similar business was sold for 10,000*l*., but its value, as regards a deceased partner's interest therein, was held to be only

(*c*) *Broughton* v. *Broughton*, 44 L. J. Ch. 526; *Simpson* v. *Chapman*, 4 De G. M. & G. 154; *Bond* v. *Milbourn*, 20 W. R. 197.

(*d*) *Featherstonehaugh* v. *Turner*, 25 Beav. 382.

(*e*) 25 Beav. 177.

(*f*) 10 Ch. D. 626, 658, 662.

(*g*) 28 Beav. 453; 27 Beav. 236.

(*h*) 27 Beav. 446.

2,000*l.* for the premises, and the right to issue the notes belonged to the surviving partner.

In *Llewellyn* v. *Rutherford* (*i*) the value of the goodwill of a public-house was in dispute, and the arbitrator was ordered to estimate it, taking into consideration the known habit of magistrates to grant and transfer licences, and also the increased value of the property in the neighbourhood.

On assignment *ad valorem* stamp required.

"Goodwill" has also been held to be "property" within the meaning of the Stamp Acts, and upon an assignment of it the instrument of assignment is liable to an *ad valorem* duty. This was distinctly laid down in 1854 in the case of *Potter* v. *Commissioners of Inland Revenue* (*j*), where it was decided that the goodwill of a business, of whatever nature, is property. It seems somewhat surprising that this decision has never been called in question. There can be no doubt that in many cases goodwill is property, as in all those classes of business where it may become an asset in the hands of an executor, or of a trustee in bankruptcy (*k*). In professional businesses, as we have already pointed out more than once, what passes is not property any more than a doctor's visit is property, although it has to be paid for. On the so-called sale of a non-dispensing medical or legal practice, the consideration for the money paid is the services to be rendered by the vendor in introducing the purchaser, together with the vendor's agreement not to compete (*l*). By these the vendor may certainly acquire the goodwill, which may be of great value; but, on the same analogy, one may get health from the visits of a medical man, but it is for the services that he is paid, and not for the health

Whether professional or otherwise.

(*i*) L. R. 10 C. P. 456.
(*j*) 10 Ex. 147.
(*k*) *South* v. *Finch*, 3 Bing. N. C. 506.
(*l*) See per Jessel, M. R., *May* v. *Thomson*, 20 Ch. D. 705, 718.

that he may restore, and surely few would call these services property. Pollock, C. B., in the case in question had clearly the distinction in his mind, for he said:—"And very frequently the goodwill of a business or profession, without any interest in land connected with it, is made the subject of sale, though there is nothing tangible in it; it is merely the advantage of the recommendation of the vendor to his connections, and his agreeing to abstain from all competition with the vendee. Still, it is a valuable thing belonging to himself, and which he may sell to another for a pecuniary consideration" (*m*); and on these grounds he held that it was property under the Stamp Acts.

In a previous case, *Lyburn* v. *Warrington* (*n*), Lord Ellenborough had decided that a deed conveying the goodwill of a butcher's business, and containing a covenant by the vendor not to carry on his trade in the neighbourhood, was not liable to an *ad valorem* stamp. Possibly this went too far, and the law of goodwill was not then very clearly settled. The case of *Belcher* v. *Sikes* (*o*), in which it was decided that a deed, in which one partner assigned his rights under certain contracts to his co-partner, did not require an *ad valorem* stamp, was expressly overruled by *Potter* v. *Commissioners of Inland Revenue* (*p*). In *Christie* v. *Commissioners of Inland Revenue* (*q*), the same point arose as in *Belcher* v. *Sikes*, namely, whether a deed of assignment of partnership property was liable to an *ad valorem* stamp, and the decision in *Potter's case* was followed, but in this latter case there was no covenant not to carry on a rival business. A release by executors of a deceased partner, not stating the consideration, may be good with

(*m*) p. 157.
(*n*) 1 Stark. 162.
(*o*) 6 B. & C. 234.
(*p*) *Supra.*
(*q*) L. R. 2 Ex. 46; and see, on the same point, *Phillips* v. *Commiss. of I. R.*, L. R. 2 Ex. 399.

only a common deed stamp, but the parties may be liable to a penalty for not stating the consideration (*r*).

Stamp on compensation for goodwill on taking land.

In *Commissioners of Inland Revenue* v. *Glasgow and South Western Rail. Co.* (*s*), these cases were cited in the House of Lords, but the question in dispute was whether the price paid for goodwill on the compulsory taking of land was liable to stamp duty. Their lordships, however, held that all the money paid was for land and for its immediate possession, and that stamp duty must be paid on all of it, and they did not discuss the abstract question of the liability of goodwill generally.

Specific performance of agreement for sale;

It is commonly said that the Court will not execute an agreement for the sale of a goodwill standing alone, but that, if it is connected with the premises, the contract for the sale of an interest in the premises and of the goodwill is a fit matter for a decree in a suit for specific performance (*t*). Thus, an agreement for the sale of a public-house and of the goodwill has been enforced (*u*); and an agreement by one partner to sell his share in a nursery garden along with the business has also been the subject of a decree (*v*). In the case of *Cooper* v. *Hood* (*w*), Lord Romilly, while refusing upon other grounds to grant specific performance, remarked that "the terms 'goodwill, &c.,' in a contract for the sale of a foundry, are not so uncertain as alone to prevent a decree for specific performance of it;" and he suggested that there would be in the deed of conveyance an assignment of the trade-marks and of a covenant restraining competition by the vendor.

(*r*) *Steer* v. *Crowley*, 14 C. B. N. S. 337.

(*s*) 12 App. Cas. 315.

(*t*) *Darby* v. *Whitaker*, 4 Dr. 134, per Kindersley, V.-C. See Fry's Specific Performance, 2nd ed. p. 34; Sugden's Vendors & Purchasers, 14th ed. p. 210.

(*u*) *Dakin* v. *Cope*, 2 Russ. 170; and see *Coslake* v. *Till*, 1 Russ. 376.

(*v*) *Kennedy* v. *Lee*, 3 Mer. 441.

(*w*) 26 Beav. 293.

It may, therefore, be taken as settled that, when goodwill is local and attached to premises, an agreement for its sale may be specifically enforced. There may, of course, be reasons why it should not be enforced. Thus in contracts for the sale of interests in and the goodwill of public-houses, time has been held to be of the essence of the contract, and an inability to take possession (*x*), to make a good title to the premises (*y*), or to assign the licences upon the day named (*z*), has been held sufficient ground for refusing specific performance. Misrepresentation is also another good ground for refusing it (*a*).

decreed when goodwill attached to premises.

May not be decreed on other grounds.

There may be some doubt, however, as to whether the proposition that goodwill must be connected with the premises, in order that an agreement for its sale may be enforced, is not too narrow. The power of the Court to enforce sales of goodwill by specific performance is limited by the fact that in many cases there is nothing upon which the Court can execute its decree; but there seems no reason why an agreement for the sale of the goodwill of a wholesale business, which included only the right to the firm-name and to the trade-marks, should not be capable of being enforced, although no interest in premises passed. If the purchaser refused to fulfil the contract, the vendor should not be limited to his remedy in damages, inasmuch as the Court could enforce his part of the contract by injunction. The high authority of Lord Eldon, in *Baxter* v. *Conolly* (*b*), is not unusually quoted to support the proposition that the goodwill must be local in order to be enforced. In that case the question before him was not the sale of the good-

Agreements for sale of "goodwill without more" capable of enforcement.

*Baxter* v. *Conolly*.

(*x*) *Coslake* v. *Till*, 1 Russ. 376.

(*y*) *Seaton* v. *Mapp*, 2 Coll. 556; *Ferrer* v. *Nash*, 35 Beav. 167.

(*z*) *Day* v. *Luhke*, L. R. 5 Eq. 336; *Cowles* v. *Gale*, L. R. 7 Ch. App. 12; *Claydon* v. *Green*, L. R. 3 C. P. 511.

(*a*) *Redgrave* v. *Hurd*, 20 Ch. D. 1.

(*b*) 1 Jac. & W. 576.

will of a business at all, but of a chance of getting a lease of certain building land and of access to it. What he said was as follows :—" The Court certainly will not execute a contract for the sale of a goodwill ; at the same time it will not enjoin against any proceeding at law under such an agreement. Suppose, for instance, there is a contract for the goodwill of a shop ; it cannot be conveyed, and the Court would say : 'Go and make what you can of it at law ; if you can recover, very well ; we will not prevent you ; if you cannot, very well again ; we will not assist you.'" Now all that this amounts to is, that the goodwill of a shop is attached to and belongs to the shop, and if the shop cannot be conveyed, the goodwill could not, for it could not exist apart from the shop. If we regard goodwill as an advantage attaching to the enjoyment of certain rights, then it can be conveyed where these rights can be enforced ; but if they cannot be enforced, it cannot be separated from them.

Agreement for sale of professional practice not enforceable.

An agreement for the sale of the goodwill of a professional practice is seldom capable of specific performance, even where the premises are also conveyed, for the goodwill attaching to the premises is, in many cases, practically nil ; and, further, because, in order to render such goodwill of value, there must be personal services performed by the vendor in the nature of introducing the purchaser to the old clients or patients, and such services the Court cannot well enforce (*c*). Then, again, there ought to be a covenant restraining the vendor from practising the same profession in such a way as to compete with the purchaser ; and there are no conditions generally applicable to trans-

(*c*) *May* v. *Thomson*, 20 Ch. D. 705 ; and see *Stocker* v. *Wedderburn*, 3 K. & J. 393, where the Court refused a decree of specific performance, as it could not order the vendor of a patent to give his services to promote a company.

actions of this nature, such as come within the description of "usual clauses," that could be inserted in an instrument to be drawn up in pursuance of an agreement for the sale of the goodwill of a professional business (*d*). Some of the judges of the Courts of Equity, while admitting the legality of a sale of a professional business, have doubted whether the Court ought to assist in the carrying out of such an agreement (*e*). When, however, the principal terms of the agreement have been settled, and when part of the contract has been executed, the Court does not seem to have hesitated to enforce the contract as against the defendant, even although it could not have enforced the plaintiff's part. Thus, in *Bryson* v. *Whitehead* (*f*), the agreement was for a sale of a dyeing business, together with a trade secret which the vendor was to teach the purchaser, and there was further a stipulation that the vendor would not use the secret for a certain time. The vendor had taught the purchaser the secret, had conveyed the premises, and had received the money, but disputed as to the covenant restraining his use of the secret. The Court, however, decreed specific performance, and ordered a covenant to be drawn up to enforce the restraint. In *Aubin* v. *Holt* (*g*), a retiring partner in a firm of attorneys agreed to leave his name in the firm, upon certain conditions, and in consideration of the payment of an annuity. The name had been used for some time, but the deed carrying out the agreement had not been executed. Upon the annuity falling into arrear, the Court decreed specific performance of the agreement, and ordered an account of the arrears to be taken.

Otherwise if partly executed.

Covenants not to carry on a business or professional

Injunction.

(*d*) *Bozon* v. *Farlow*, 1 Mer. 459.
(*e*) *Thornbury* v. *Bevill*, 1 Y. & C. C. C. 554; and see Chap. III.
(*f*) 1 Sim. & Stu. 74.
(*g*) 2 K. & J. 66.

practice in certain districts, if reasonably limited, will also be enforced by injunction (*h*).

It may also be noticed that, with an action for specific performance, a claim for damages may be made as an alternative; but if the specific performance is rendered impossible by reason of the acts of the plaintiff, the claim for damages will not lie without amendment of the pleadings (*i*).

Setting aside agreements for sale.

Disputes not infrequently arise after sales of the goodwill of businesses, owing to the returns not coming up to the amount which the purchaser had expected, and misrepresentation is not an uncommon charge brought against the vendor.

Misrepresentation.

If during the negotiations for the sale the vendor has made misrepresentations upon which the purchaser has relied, and he has been thereby induced to purchase either a business or a share in a partnership, then he may, upon discovering the true state of the facts, either rescind the contract and have his purchase-money returned to him, or he may keep the business and bring an action for damages for fraudulent misrepresentation (*j*).

Rescission of agreement.

In order to rescind the contract, it is not necessary that the misrepresentations should have been made fraudulently; it is enough if they are false (*k*). The purchaser must, however, be able to restore to the vendor what he has purchased; but it has been held that if a person purchases a share in an insolvent partnership, relying on the faith of the owners of the business, and if

(*h*) *Whittaker* v. *Howe*, 3 Beav. 383; *Nicholls* v. *Stretton*, 7 Beav. 42; and see Chap. VII.

(*i*) *Hipgrave* v. *Case*, 28 Ch. D. 356.

(*j*) *Dobell* v. *Stevens*, 3 B. & C. 623; *Oakes* v. *Turquand*, L. R. 2 H. L. 325; *Pillans* v. *Harkness*, Colles, 442; *Rawlins* v. *Wickham*, 1 Giff. 355; 3 De G. & J. 304; and see Lindley, 4th ed. vol. 2, p. 974 *et seq.*

(*k*) *Adams* v. *Newbigging*, 13 App. Cas. 308.

he does not find out the true state of the case for some months, he is nevertheless entitled to rescission, although the business he would restore is worthless and more hopelessly insolvent than when he purchased (*l*).

Misrepresentation a question of fact.

The question as to whether the vendor's statements have amounted to misrepresentation is a question for the jury. He must be shown, however, to have misrepresented facts, and not merely to have stated an erroneous opinion. Thus, if he represent that the rent at which premises have been let is greater than it is (*m*), or that his receipts from the business were greater than they really have been (*n*), then these are misrepresentations of facts, and the purchaser may rescind his contract; but if he state what the profits may be, or that the takings during the next year ought to reach a certain sum, then he merely states his opinion, and this is not ground for rescission. It does not matter whether the representation is contained in the instrument of conveyance or not, nor does the subject of the misrepresentation even require to be mentioned therein. In either case evidence will be allowed to prove the misrepresentations, and it will be left to the jury to say whether or not they operated upon the purchaser's mind and induced him to carry out the purchase. Thus, in *Hutchinson* v. *Morley* (*o*), a contract for the sale of a public-house was held to be voided by a false representation by the vendor as to the amount of the business attached to the house, even although the agreement expressly excluded the goodwill. It is not even necessary that the vendor should have made the representation to the purchaser; it is sufficient if he have misstated the facts to another, who, with his know-

(*l*) *Adams* v. *Newbigging*, *supra*.

(*m*) *Lysney* v. *Selby*, 2 Ld. Raym. 1118; *Dimmock* v. *Hallett*, 2 Ch. App. 21, 28.

(*n*) *Dobell* v. *Stevens*, *supra*; *Pilmore* v. *Hood*, 5 Bing. N. C. 97.

(*o*) 7 Scott's Rep. 341; and see *Dobell* v. *Stevens*, *supra*.

Representation must be relied upon.

ledge, has communicated them to the purchaser (*o*). If the purchaser has relied on the misrepresentations, it will be no defence to say that he could easily have learned the truth, as, say, by examining the books to find out the exact amount of the receipts (*p*). If, however, before entering into the contract, he has ascertained the truth, he cannot then take advantage of the misrepresentation to rescind it subsequently if his purchase should not realize his expectations. Upon finding out the truth the purchaser should also put off no time in claiming a rescission, otherwise he may be held to have waived his right to do so, and his only remedy would be an action for damages (*q*). To found an action for damages it is necessary that the representations should have been made fraudulently, unless they actually amounted to a warranty (*r*).

Action for damages.

Recovering premium paid on entering a partnership.

Questions of a nature, similar to those just discussed, occur when a partnership is dissolved, soon after one of the partners, on paying a sum of money, has been admitted to the business. This sum of money is usually called a premium, and it goes not to the capital of the firm, but to the private estate of the person to whom it is paid. If the new partner has been deceived by misrepresentations he has his remedy (*s*); but sometimes his co-partner, from whom he has purchased the share of the business, behaves in such a manner that the partnership must be dissolved. In such a case the Courts, being of opinion that the consideration has in part failed, while ordering the premium to be paid, allow the incoming partner damages for breach of contract (*t*). These damages usually depend on the

(*o*) *Pilmore* v. *Hood*, 5 Bing. N. C. 97.

(*p*) *Mummery* v. *Paul*, 1 C. B. 316; *Redgrave* v. *Hurd*, 20 Ch. D. 1.

(*q*) *Dobell* v. *Stevens*, 3 B. & C. 623.

(*r*) *Redgrave* v. *Hurd*, *supra*; *Atwood* v. *Small*, 6 Cl. & F. 232, 344.

(*s*) *Allen* v. *Bury*, 1 Coll. 589; *Ex parte Turquand*, 2 M. D. & D. 339.

(*t*) *Hamil* v. *Stokes*, 4 Price, 161;

amount of the premium to be paid, the intended duration of the partnership, and the time for which it has in fact lasted. If, however, the firm becomes bankrupt, or from any cause other than misconduct is dissolved prior to the period fixed for its duration, this is a contingency which the incoming partner should have had in view, and he cannot expect to recover back his premium (*u*).

Consideration paid for goodwill.

Questions sometimes arise in connection with the consideration given for the goodwill of a business. This consideration varies considerably in its form. Thus, when the business is sold to a company, the vendor not infrequently accepts a number of fully paid-up shares in the company as payment. Another common form is when the consideration is the payment of an annuity, or the price is a share of the profits for a certain number of years (*v*). In arrangements of this latter kind it is an implied covenant that the purchasers shall continue to carry on the business, and he will be liable for damages if, by his own act, he becomes incapacitated for so doing (*w*); and further, if the purchaser break this implied covenant, the Court will not intervene to restrain the vendor from departing from any covenants into which he may have entered in respect of the same transaction (*x*).

If consideration a share of profits, vendee must carry on the business.

*Freeland* v. *Stansfield*, 2 Sm. & Giff. 479; *Blissett* v. *Daniel*, 10 Hare, 493; *Astle* v. *Wright*, 23 Beav. 77; *Edmonds* v. *Robinson*, 29 Ch. D. 170; *Atwood* v. *Maude*, 3 Ch. App. 369; *Bullock* v. *Crockett*, 3 Giff. 507.

(*u*) *Akhurst* v. *Jackson*, 1 Swanst. 85; *Whincup* v. *Hughes*, L. R. 6 C. P. 78; and see Lindley on Partnership, 5th ed. p. 64 *et seq.*, where this subject is fully discussed.

(*v*) See *Ex parte Harper*, 1 De G. & J. 180; *Holyland* v. *De Mendez*, 3 Mer. 184; and see Bovill's Act, 28 & 29 Vict. c. 86, ss. 4, 6, *supra*.

(*w*) *McIntyre* v. *Belcher*, 14 C. B. N. S. 654; 32 L. J. C. P. 254.

(*x*) *Telegraph Dispatch Co.* v. *McLean*, L. R. 8 Ch. App. 658.

## SECT. 4.—*The Disposition of Goodwill under Partnership Agreements.*

We have already discussed in the preceding chapter how goodwill is treated by the Courts upon a dissolution of a firm in the absence of any provisions for its disposition.

Usually questions of construction.

When there have been partnership articles, the questions relating to goodwill have been mainly questions of construction, and great difficulty has been occasioned by reason of the fact that the disposition of the goodwill has not been expressly provided for. Thus, it has been very doubtful in many cases whether, upon the death, retirement, or expulsion of a partner in a continuing firm, he or his estate is entitled to any compensation in respect thereof.

We would therefore repeat the very prudent suggestion in Lindley on Partnership (*y*), that in partnership articles the word "goodwill" should be specifically used, so that disputes may be prevented as to whether it is included in such phrases as "the stock and effects" or "the property and effects" of the partnership.

According to the earlier decisions, it would seem that goodwill was not to be valued among the other partnership assets unless expressly mentioned; but as it is now regarded as a more definite form of property, the tendency of later decisions is the other way.

*Hall* v. *Hall.*

In *Hall* v. *Hall* (*z*), two partners had entered into partnership for a term of twenty-one years; but owing to disputes the firm was dissolved by decree; one of the co-partners agreeing to retire from this particular business, and the other agreeing to take the stock and effects at a valuation. By the partnership articles it was provided

(*y*) 5th ed. p. 447. (*z*) 20 Beav. 139.

that in case of the retirement of one of the partners, the other was to have the option of purchasing the "share" of the retiring partner; but if he should not purchase the "share," then the "stock and effects" were to be sold, and the partnership affairs wound up. Upon a claim by the retiring partner for an allowance in respect of goodwill, Romilly, M. R., refused it on the ground that the articles in no way specified that such compensation was to be made.

In *Barrow* v. *Barrow* (*a*), however, the same learned judge held that the goodwill of a partnership passed under the words "effects and things," and held that a retiring partner was not bound by a general account which he had signed, because it was not according to the articles, and no mention was made of goodwill in it. *Barrow* v. *Barrow.*

In *Burfield* v. *Rouch* (*b*) the plaintiff had carried on the business of a chemist for a number of years in the same premises, which premises were his own property, and had then taken the defendant into the business as a partner, assigning to him half the stock and goodwill, but retaining the premises; and it was provided that, on the retirement of one, the other was to have the premises at the then value of them. Upon a dispute as to the manner in which the premises were to be valued, it was held, that the valuation was to be made irrespective of the advantages to be derived from the fact that the business of a chemist had been carried on there for thirty years, upon the ground that no mention of goodwill was made in the articles. *Burfield* v. *Rouch.*

In *Hall* v. *Burrows* (*c*) it was held that the goodwill and trade mark were included in an agreement by the surviving partner to purchase the partnership *stock* at a *Hall* v. *Burrows.*

(*a*) 27 L. T. N. S. 431.

(*b*) 21 Beav. 241; and see *Morison* v. *Moat*, 9 Hare, 241.

(*c*) 4 De G. J. & S. 150; 32 L. J. Ch. 548.

valuation, and that the executors of the deceased partner were entitled to a share of their value.

*Reynolds* v. *Bullock.*

In *Reynolds* v. *Bullock* (*d*) it was stated by the Vice-Chancellor that it is now settled that goodwill is ordinarily a distinct part of the property of a trading partnership; and, therefore, under a provision in partnership articles for the valuation of the partnership "property and effects," at its close the goodwill is a matter for valuation.

*Stewart* v. *Gladstone.*

In *Stewart* v. *Gladstone* (*e*) it was held by the Court of Appeal, reversing Fry, J., that while the words "estate and effects" in partnership articles "in some sense might include goodwill," yet that, in a case where the retiring partner was to be paid a sum of money equal to a proportionate part of his share in one year's profit calculated upon the average profits of the three preceding years," that the goodwill was not to be taken into account in the valuation of such stock and effects of the partnership as are susceptible of valuation. The Lords Justices of Appeal based their judgments on the ground that it was not usual for merchants to include goodwill in their annual accounts, and as provision had been made for ascertaining the retiring partner's share by such accounts, and no mention being there made of the goodwill, it ought not, therefore, to be included. The business of the firm, in this case, was that of Indian commission merchants, and it is to be noticed that both Jessel, M. R., and Bramwell, L. J., were doubtful as to whether there existed in such a business a saleable asset in the nature of goodwill, the only thing that could be sold being the name, which might not be of much value (*f*).

Rights of

When a partner retires from a firm and sells his share

(*d*) 47 L. J. Ch. 773; and see also *Pawsey* v. *Armstrong*, 18 Ch. D. 698.

(*e*) 10 Ch. D. 626; and see *Wade* v. *Jenkins*, 2 Giff. 509.

(*f*) 10 Ch. D. 658, 662, 663.

to the co-partners, he is not debarred, any more than any other vendor of a goodwill, from setting up a similar business wherever he may choose, and publicly and privately soliciting the old customers (*g*). It is advisable, therefore, in partnership articles to provide for such a contingency, by stipulating that a partner so retiring shall not set up a rival business in the vicinity. It has also been decided that a partner who has been expelled from a firm under a provision in partnership articles, will be at liberty to carry on a similar business on his own account, unless the articles provide that he shall not (*h*). retiring partner.

When a firm continues after the expiration of the period fixed by the partnership agreement for its duration, it becomes a partnership at will; but, beyond that modification, the partners, in the absence of a new agreement, are presumed to carry on the business under the old provisions. Covenants and stipulations relating to the goodwill of the business will, therefore, usually be unaffected by the fact that the partnership has become a partnership at will (*i*). Partnership at will.

In *Cox* v. *Willoughby* (*j*) this principle was applied to the case of a partnership of solicitors. By the articles it had been provided that, on the decease of one of the partners, before the expiration of the partnership term, the surviving partner should pay to his executors the sum of 1,500*l.*, as the purchase-money for his interest in the goodwill of the business. Fry, J., held that this provision applied to the partnership at will constituted by their carrying on the business without fresh articles after the expiration of the partnership term, and he ordered the sum to be paid.

(*g*) *Harrison* v. *Gardner*, 2 Madd. 198; *Shackle* v. *Baker*, 14 Ves. 468; *McKirdy* v. *Paterson* (Sc.), 16 D. 1013; *Pearson* v. *Pearson*, 14 Ch. D. 145.

(*h*) *Dawson* v. *Beeson*, 22 Ch. D. 504.

(*i*) *King* v. *Chuck*, 17 Beav. 325; *Clark* v. *Leach*, 32 Beav. 14.

(*j*) 13 Ch. D. 863.

Goodwill of no value in a professional partnership at will.

It is to be noticed, however, that, in the absence of such a provision as that in the last case, the value of a share of a goodwill in a professional partnership is seriously affected by the length of the period fixed for the duration of the partnership. It may be doubted whether the goodwill of a professional partnership at will is of any value at all. If one partner retires from the firm, the remaining partners receive the benefit of his retirement, if he does not set up a rival business, merely as an advantage attaching to their position, and not as a form of property. When a professional man has a connection, it may be worth a great deal to become his partner for a number of years, but when the partnership may be put an end to at a day's notice, the value of a share in the partnership may be very much diminished. In estimating, therefore, the value to be put upon a retiring partner's share in the goodwill of a professional business, the intended duration of the partnership, and the time that has elapsed, are matters usually to be considered.

*Austen* v. *Boys*.

In *Austen* v. *Boys* (*k*) the plaintiff had been a partner with one other as a firm of attorneys and solicitors in London. The partnership was to last for seven years, but either partner might retire, and in that case the continuing partner was to pay the retiring partner for his share in the business and in the goodwill thereof at the fair marketable value. The plaintiff retired only two days before the end of the seven years, and claimed an allowance for goodwill. Lord Chancellor Chelmsford held that the goodwill in this case could only mean the interest which the retiring partner would have had if he had remained in the partnership till the expiration of it by efflux of time. If the partnership had expired without notice, there would have

(*k*) 2 De G. & J. 626.

been no goodwill to have been paid for, and therefore the plaintiff's interest was quite nominal.

*Arundell* v. *Bell*.

Similarly, in the more recent case of *Arundell* v. *Bell* (*l*), three partners who had carried on a solicitor's business had agreed to dissolve the partnership; two were to continue the business, and the third was to be engaged as a clerk. On the death of the third, shortly afterwards, his administratrix claimed in a partnership account that a sum be allowed in respect of his interest in the "goodwill," but it was disallowed. The judgment was based on two grounds: first, that there was, as a rule, no goodwill of attorneys' business existing as an asset; and second, that in the agreement there was nothing indicating a transfer of anything in the nature of goodwill.

Agreement for survivor of a partnership to pay for the goodwill.

Although, however, the benefit of the goodwill of a personal business accrues to the surviving members of the firm, upon the death of one of them, in the absence of any provision to the contrary, there is no reason why there should not be some provision made in the partnership articles by which the survivors should be required to pay for the benefit they obtain. It is not as if there was no consideration; for, when a man is taken into partnership, he regards this as one of the chances, and there is nothing illegal in his paying for it, and still less if he is not called upon to pay until he gets the benefit. Thus, in *Featherstonehaugh* v. *Turner* (*m*), a surgeon had taken another into partnership, and it was agreed that, in the event of the death of one, his representative should have the power of putting some other person in the precise position in which the deceased had been. On the death of the one who was taken in, the defendant, the surviving partner, would not

*Featherstonehaugh* v. *Turner*.

(*l*) 52 L. J. N. S. Ch. 537.

(*m*) 25 Beav. 382.

accept a new partner in his place, so the Court ordered that the value of the share and interest of the deceased should be ascertained, and the defendant fixed with the amount. This was calculated by the chief clerk upon two years' net profits.

In trading partnerships, agreements of this kind are not uncommon. The surviving partners frequently acquire a valuable asset which might have been sold, and it is quite fair that they should give some consideration for it. The Courts will enforce agreements to that effect.

*Turner* v. *Major.*

Thus, in *Turner* v. *Major* (*n*), where it was agreed by two partners who carried on the business of manufacturing chemists in different districts that the partnership should be dissolved, and that the premises, stock, and goodwill should be sold, and until sold that it should vest in the receivers appointed, the Court restrained one partner who had made use of the partnership property from carrying on the business on his own account in one district, and ordered him to account for the profits.

*Wade* v. *Jenkins.*

In *Wade* v. *Jenkins* (*o*) it was provided in the partnership articles that the goodwill of a brewing business should be valued at 6,000*l.*, and belong to the partners in the proportion of their shares in the business, although it was not to be taken into consideration in the accounts of the partnership. Upon the death of one, the Court ordered that his representative be paid such part of the 6,000*l.* as corresponded to the share of the deceased.

Very frequently other provisions are made in regard to a partner's share in a business. Thus, it is not unfrequently provided that, upon the death of a partner, the surviving partner shall continue the business and pay the

(*n*) 3 Giff. 442. (*o*) 2 Giff. 509.

widow of the deceased partner an annuity, or that a son or some other person shall be received into partnership. Such provisions are quite legal, and will be enforced by the Courts (*p*).

(*p*) *Page* v. *Cox*, 10 Hare, 163. For a discussion of these provisions the reader is referred to Lindley on Partnership, 4th ed. pp. 875 *et seq.*; 5th ed. pp. 429 *et seq.*

## CHAPTER VI.

### GOODWILL AS AFFECTING THE VALUE OF LAND AND PREMISES.

Local goodwill.

THE possession of the premises where a successful trade or business had been carried on was early recognised, both in law and in commerce, as being most material for the purpose of retaining the old connection. In the earlier cases, indeed, goodwill, as has been already pointed out, was considered to be purely local — the chance that business would be had at a certain place in consequence of the way in which that business had been previously carried on. The probability that persons will resort to the same house, in spite of a change of hands, has been found to be so great that persons desirous of carrying on a business in a certain neighbourhood will pay a larger price for premises than they would have done had the premises been altogether untried, and their suitability for such a business unproved.

The fitness of the building and of its situation is not by any means the sole advantage appertaining to the old place. The ability and industry of the previous occupant may have given the premises a name and a reputation which, in the hands of an unbusiness-like and careless person, they never would have attained. This reputation that he gives them is very much like the improvement that a skilful farmer effects upon rough untilled land.

It is the personal endeavours of the occupier that in each case work the change; but it is to the land and to the person who has the right to use the land that this enhanced value, in the absence of stipulations, enures (*a*). Goodwill in this aspect thus becomes subject to the incidents affecting real and leasehold property (*b*). If the trader holds his premises upon lease, he may obtain during his tenure the benefit of his labours; but at the expiration of the term this advantage passes to the landlord, who may reap the benefit thereof by obtaining, upon a renewal of the lease, either a large premium or an increased rent. If the premises are held upon a yearly tenancy, the landlord has his tenant even more at his mercy, as he can raise his rent annually according as the possession of the premises becomes of more and more value to the trader.

Subject to the incidents of real property.

Does the landlord or tenant get the benefit?

In this connection questions have sometimes arisen as to whether a name given to the premises by the tenant, and which has become well known, remains with the house, or whether the tenant has the right to it. In cases of hotels and theatres, the name may be of considerable value. It is, however, a question of fact to be determined in each particular instance; and in the United States, where the matter has been mainly litigated, the decisions appear somewhat conflicting. *Woodward* v. *Lazar* (*c*) is a good example of this class of case. There a tenant had leased a house, in which he had carried on an hotel, which he had called "The What Cheer House." On the expiration of his lease he had built on an adjoining plot another house, which he also called "The What Cheer House." The defendants had purchased the old hotel, and had called it "The Original What Cheer House," but at the

Does a name adhere to premises?

(*a*) *Llewellyn* v. *Rutherford*, L. R. 10 C. P. 456, 467.

(*b*) *Booth* v. *Curtis*, 17 W. R. 393.

(*c*) 21 Cal. 448.

instance of the previous tenant they were restrained from using the words "What Cheer House" as a name for any hotel in that city. In support of this decision, Norton, J., said: "A tenant, by giving a particular name to a building which he applies to some particular use, as a sign of the business done at that place, does not thereby make the name a fixture to the building and transfer it irrevocably to the landlord." In the case of a theatre the name, however, was held to have become attached to the premises and to pass with them (*d*).

Agreements between landlord and tenant as to the goodwill.

Questions of this kind may, however, be obviated by agreement between the parties. A trader, who is a tenant, may, like a farmer, protect himself from losing the advantages which his skill and industry may have produced upon the land, as by requiring a covenant from the landlord that he will be entitled to the value of these advantages. We have an example of this in *Llewellyn* v. *Rutherford* (*e*). In that case the plaintiff, who had been tenant of an hotel, had had a proviso in his lease providing that at the expiration of his term "all such sum and sums of money as shall or can be procured for the goodwill of the business of a licensed victualler in respect of the premises for an incoming tenant, shall be received by and belong to the lessee, his executors, &c." At the expiration of the term the premises were let to a new tenant at a largely increased rental, and upon the payment of a premium of 1,300*l*. The landlord refused to hand this sum over to the outgoing tenant, and the matter was referred to an arbitrator to determine the amount of damages (if any) to which the plaintiff was entitled. Upon a case stated for the opinion of the Court, it was

(*d*) *Booth* v. *Jarrett*, 52 How. Pr. 169; and see *Woods* v. *Sands*, Sebastian Digest of Trade Mark Cases, 467.

(*e*) L. R. 10 C. P. 456.

found that the goodwill had a very considerable value, and the Court held that the proviso had been broken, and the arbitrator was ordered to assess the damages, according as one accustomed to value goodwill as between outgoing and incoming tenant would assess them, and he was also ordered not to disregard, in so doing, the increased value of the property in the neighbourhood, as the plaintiff was entitled to the benefit thereof.

In cases of leases, then, it is clear that there are two interests in the goodwill, one in the term and one in the reversion. During the period of a lease the tenant may sell the goodwill of his business and assign the remainder of his term. The price he can command, while depending on the length of the term still unexpired, and upon the chance of renewal, will also in many cases depend upon the nature of the business, a matter which will also not unfrequently affect the value of the reversion (*f*).

The question of goodwill affecting the value of land arises in many cases; as, for example, between the heir and next of kin (*g*), between the trustee in bankruptcy and a mortgagee, and so forth. The bulk of the decisions, however, may be discussed conveniently under the following heads:—

I. Mortgage of land.
II. Compulsory purchase of land.
III. The rateability of land.

(*f*) *Edwards* v. *Edwards*, 1 Jur. 654.

(*g*) *Booth* v. *Curtis*, 17 W. R. 393.

## Sect. I.—*Mortgage.*

Local goodwill passes to mortgagee.

It may be said generally that when a person mortgages his interest in his lands or premises, whether leasehold or otherwise, the mortgagee becomes entitled to the advantage of any goodwill that may accrue to them; that is to say, that in so far as the goodwill enhances the value of the land or houses it forms part of the mortgagee's security. If, on the other hand, the goodwill is personal, or if it is valuable because of a trade name or mark independently of the place, then it does not pass to the mortgagee (*h*).

In *Chissum* v. *Dewes* (*i*) the lease of a house, where an upholsterer had carried on business, had been deposited with a creditor as security for a debt. In a creditor's suit the unexpired term in the house, and the goodwill of the business in it, were sold with the consent of the person with whom the lease had been deposited, and fetched 1,000*l.*, a sum less than the amount of his debt. It was held that this equitable mortgagee was entitled to the whole of the purchase-money, whether arising from the value of the goodwill, or from the value of the lease independently of the goodwill. Langdale, M. R., in his judgment said: "The goodwill of the business is nothing more than an advantage attached to the possession of the house; and the mortgagee, being entitled to the possession of the house, is entitled to the whole of that advantage. I cannot separate the goodwill from the house."

As against assignee in bankruptcy.

Similarly, as between the assignee in bankruptcy and a mortgagee of the leasehold of premises in which a baker's business had been carried on, it was held that a sum

(*h*) *Ex parte Thomas*, 2 M. D. & De G. 294.

(*i*) 5 Russ. 29 (1828).

granted by a railway company upon taking the premises, in which was included compensation for loss of profits, belonged wholly to the mortgagee, his debt, of course, not being less than the amount awarded (*j*). In *Pile* v. *Pile* (*k*), a railway company had taken a ship and graving dock, and premises connected therewith, which were at the time in the possession of the mortgagees, and the Court of Appeal held that the sum awarded passed wholly to the mortgagees, including that which was in the nature of compensation for the goodwill of the business. James, L. J., said, in his judgment, that the arbitrators, in using the words "for the profits of the business," and similar terms, only meant that "in estimating the value they estimated the diminished capacity of the property to make profits for the future" (*l*). *Pile* v. *Pile.*

These last two cases appear, at first sight, to be somewhat at variance with the decision of the Court of Appeal in *Cooper* v. *The Metropolitan Board of Works* (*m*). In that case mortgaged premises were taken by the defendants, a public body, under the powers of their private Act, incorporating the Lands Clauses Consolidation Act, 1845. The plaintiff was the tenant, and he had mortgaged his leasehold interest in the premises. He was in possession, however, and carried on the business of a tailor thereon. By an agreement between the parties, the total damage was estimated at 400*l.*, and the defendants agreed to pay this as full compensation for all loss, including the leasehold interest, which was specially assessed at 150*l.* The balance was made up of compensation for damage to trade, cost of removal, and fixtures. As the tenant, however, owing to the mortgage, could not give a good title, the defendants *Cooper* v. *Board of Works.*

(*j*) *King* v. *Midland Rail. Co.*, 17 W. R. 113.
(*k*) 3 Ch. D. 36.
(*l*) *Ibid.* p. 42.
(*m*) 25 Ch. D. 472.

paid the whole sum into Court. This action was brought by the mortgagor for specific performance, and the Court ordered the sum of 250*l.* to be paid to him at once. This case is so far distinguishable from the preceding ones, inasmuch as the Act specially provided for personal compensation to the occupier; but this cannot mean, as implied by Lord Justice Cotton's judgment, compensation for personal goodwill (*n*). It was argued that part of this 250*l.* included goodwill, and his lordship pointed out, properly enough, that there was goodwill attaching to personal reputation, as well as to a particular house, and this would not go to the mortgagee. This personal reputation, however, would be injured by taking his old place from him only if he could not get a similar place of business in the neighbourhood. If such a place could be found, all the loss that he would suffer in the nature of injury to goodwill would be local and attached to the place.

Mortgagor in possession entitled to compensation for disturbance.

It is submitted that the better ground of decision is that he was in possession, and as long as he paid his interest on his mortgage debt he was entitled to remain in possession as against the mortgagees. He had, therefore, a clear right for compensation when the house was taken from him (*o*). In *Pile* v. *Pile* (*p*) the mortgagees were themselves in possession, and were the only persons who could have made profits if any one could; but in *Cooper's Case*, there were two interests to compensate, or three rather, if we include the landlord's. There was the mortgagee's interest, which was the value of the lease at what it would have ordinarily sold for, together with any goodwill thereto attached. Then there was the tenant's right to possession, and the value that this possession was to

(*n*) 25 Ch. D. 479.

(*o*) *In re Hungerford Market Co.*, 2 B. & Ad. 341; 4 B. & Ad. 592, 596.

(*p*) 3 Ch. D. 36.

him. Both these interests include goodwill, but they are both interests in land. It is the right to land, and to the immediate occupation of land, that is acquired in such cases, and goodwill may affect alike the value of the possession and of the reversion (*q*).

By far the larger number of cases that arise of goodwill attaching to the premises, and therewith passing to the mortgagee, occur in connection with hotels and public-houses. In that class of business it may be taken as a general rule that all the assignable goodwill attaches to the premises (*r*). Not unfrequently, when the occupier of licensed premises mortgages them, he expressly includes the goodwill, in which case he is bound to assign his licence to the mortgagee when he takes possession, or to a receiver and manager appointed by the Court on his behalf (*s*). The mortgagees in possession have also a right to apply for a renewal of the licence (*t*).

## Sect. II.—*Compensation for Goodwill on the taking or injuring of Land.*

Statutory powers of purchasing land.

The legislature having from time to time granted to various public bodies, by private Acts of Parliament, rights to purchase and take land, either compulsorily or otherwise, for the purpose of executing works, it has at the same time usually provided that compensation shall be

(*q*) See *infra*, p. 114.

(*r*) *Ex parte Punnett*, 16 Ch. D. 226; *Ex parte Thomas*, 2 Mont. D. & De G. 294; *Booth* v. *Curtis*, 17 W. R. 393.

(*s*) *Rutter* v. *Daniel*, 30 W. R. 724; *Truman* v. *Redgrave*, L. R. 18 Ch. D. 547; *Manifold* v. *Morris*, 5 Bing. N. C. 420.

(*t*) *Garrett* v. *JJ. of Middlesex*, 12 Q. B. D. 620; and see *Day* v. *Luhke*, L. R. 5 Eq. 336; and see *supra*, Chap. V. sect. I.

given to owners of land and of interests therein, either when compulsorily taken for, or injuriously affected by, the execution of these works. The liability for compensation is now most frequently regulated by the Lands Clauses Consolidation Act, 1845 (*u*), which is usually incorporated, wholly or in part, in the private Act. In the case of railway companies' Acts, the Railways Clauses Consolidation Act, 1845 (*x*), is usually incorporated as well as the Lands Clauses Consolidation Act. If these are not incorporated, the private Act generally contains provisions to a similar effect (*y*).

In certain Acts only those parts of the Lands Clauses Consolidation Act are incorporated which regard the taking of lands, so that no compensation is allowed when lands are merely injuriously affected by the authorised works (*z*).

The general principles regulating compensation under these various Acts are for the most part the same, although in some cases the range of compensation is much wider than in others. It is proposed here to discuss these principles in so far as they relate to compensation for goodwill. In some of the Acts, goodwill is specifically mentioned as a subject of compensation (*a*); but even in the absence of this, when it affects the value of land, it naturally falls under the general provisions.

(*u*) 8 & 9 Vict. c. 20. In Scotland, 8 Vict. c. 19.

(*x*) 8 & 9 Vict. c. 18. In Scotland, 8 & 9 Vict. c. 33.

(*y*) The Public Health Act, 1875, s. 308; the Artizans' Dwellings Improvement Act (45 & 46 Vict. c. 54); the Metropolitan Paving Act (57 Geo. 3, c. 29, s. 82).

(*z*) The London City Improvement Act; the City of London Sewers Act, 1848 (11 & 12 Vict. c. 143); the Metropolitan Management Act, 1858 (18 & 19 Vict. c. 120); and see *R.* v. *The Lord Mayor of London*, L. R. 2 Q. B. 292; *Bigg* v. *Corporation of London*, 15 Eq. 376.

(*a*) Metropolitan Paving Act (57 Geo. 3, c. 29), s. 82; Hungerford Market Company's Act (11 Geo. 4, c. lxx), s. 19.

Questions as to compensation for lands taken or injured naturally fall under three heads:— Heads of compensation.

I. When land is taken.
II. When land is injuriously affected.
III. When land is severed, part being taken and the rest injured.

And in assessing damages juries are directed, although not required, to distinguish the sums awarded under these different heads (*b*).

The word "land," it may be noticed, is used to include "messuages, lands, tenements, and hereditaments of any tenure" (*c*).

### Sub-Sect. (i). *When Lands are Compulsorily taken.*

When land is taken, every person having an interest therein is entitled to compensation, whether the interest be that of lessee, copyholder, tenant from year to year, mortgagee or owner of the fee (*d*), and whenever there is goodwill affected by the taking of any of these interests, the injury must be compensated (*d*). All interests to be compensated.

In calculating the respective interests of the parties in the goodwill a number of considerations must be taken into account. The interest of the mortgagee or the landlord is merely in the value of the local goodwill—that goodwill which attaches to the premises and would remain with them and be of value, although the trader started a Landlord's interest in the goodwill.

(*b*) Lands Clauses Consolidation Act, 1845, s. 49.

(*c*) *Ibid.* s. 3.

(*d*) To mortgagee, see *Pile* v. *Pile*, 3 Ch. D. 36; and sect. 108. Lessee and mortgagee, *Cooper* v. *Metropolitan Board of Works*, 25 Ch. D. 472. As to respective compensation to lessor and lessee, see *Penny* v. *Penny*, L. R. 5 Eq. 227; *In re King*, L. R. 16 Eq. 521; to owner in possession, *Commissioners of Inland Revenue* v. *L. & N. W. Rail. Co.*, 12 App. Cas. 315; and see ss. 95—126.

similar business in a neighbouring house. In the case of licensed houses this may be of considerable value to the person to whom the house belongs, as the licence practically gives him a monopoly and insures customers (*e*).

Tenant's interest.

The lessee's, tenant's, or occupier's interest is of quite a different nature. The goodwill of his business may be of such a character as not to be capable of assignment, as in the case of a business requiring special personal qualities, and yet the loss of his premises in some particular neighbourhood might be such as to seriously damage his connection. In such a case he would be clearly entitled to compensation for disturbance, inasmuch as the occupation of the house is a matter of value to him. As a general rule, it may be said that business premises are of more value to the occupant than they are to anyone else, for if a man does not wish to retire from business the good feeling and goodwill of his customers to him are such that they cannot be altogether transferred to another. The loss of premises might intail a loss of the benefits derived from this good feeling, more especially if he could not get equally suitable premises in the neighbourhood. Therefore, in estimating the value of premises taken compulsorily, it is not the price that could be got for them upon a sale by the occupant, but the price he would have given to remain in them. In business, it may be said that a man is only desirous of keeping his property when it is of more value to himself than it is to anyone else. In practice, surveyors usually add from 10 per cent. to 50 per cent. on account of this, although the reason therefor is not always apparent, but it is usually included under words wide enough to cover damages real and imaginary. In *Bidder* v. *The North Staffordshire Railway Company* (*f*), Lord Bramwell

(*e*) *Cooper* v. *Metropolitan Board of Works, supra.*

(*f*) 4 Q. B. D. p. 432; 27 W. R. 540.

indicated pretty clearly what should be compensated in cases of this kind: "It is," he said, "as though a house in a street were taken where a man carried on business, and there were other houses in the same street to be had, to which the business could be transferred with no loss of goodwill. In such a case no compensation for goodwill ought to be given. If the rent was greater, that ought to be compensated for; if the lease was shorter, that ought: and if other circumstances of loss or precariousness, they ought."

*White* v. *Commissioners of Public Works.*

In the case of *White* v. *The Commissioners of Public Works* (*g*), the arbitrator awarded the plaintiff compensation for loss of goodwill or for loss of profits upon the defendants taking his premises, at No. 10, Parliament Street, the lease of which he had just purchased. He had carried on an old-established business of boot and shoe making at No. 11, the adjoining house, and on the expiry of the lease thereof he intended moving into No. 10. Evidence was admitted of the profits he had made at No. 11, and upon this basis he was awarded a sum of 1,000*l.* in respect of the profits he might have made at No. 10 if the premises had not been taken for the purposes of the defendants. The Court held that the arbitrator in so doing had not exceeded his powers. This decision may have been quite correct, but it is difficult to see in what way there could be such a large loss of profits or of goodwill unless no other convenient house was obtainable in the neighbourhood, but on this point the report is silent.

*Jubb* v. *Hull Dock Co.*

The principle upon which compensation is awarded to an occupant was also explained and illustrated in *Jubb* v. *The Hull Dock Company* (*h*). In that case the jury awarded 400*l.* for the purchase of the plaintiff's interest

(*g*) 22 L. T. N. S. 591. (*h*) 15 L. J. Q. B. 403.

in his brew-house, and 300*l.* as a compensation for the damage he would sustain by reason of having to give up his business as a brewer until he could obtain suitable premises in which to carry on his business. The Court held that this finding was warranted. "The principle of compensation," in such a case "is the same as in trespass for expulsion" (*i*). The company, in taking the land, expel the occupier from his property, and are bound to compensate him for all the loss. It must be noticed, nevertheless, that what they pay for is land, and the right to its immediate occupation and such items of compensation as goodwill, loss of profits, and such like, are mere loose and general phrases. "In strictness the thing which is to be ascertained is the price to be paid for the land—that land with all the potentialities, with all the actual use of it by the person who holds it, is to be considered by those who have to assess the compensation" (*k*). The capacity of the land for future profits is, therefore, also to be assessed, provided that these profits could have been earned by the person claiming (*l*). It has been decided, however, that if the trade of a house prior to its purchase has been injured by reason of the destruction of the neighbouring houses, under the powers of the Act, prior to the public body taking it over, the depreciation of the premises thereby occasioned is not a subject of compensation (*m*).

Prospective value.

Compensation to tenant when land taken at end of tenancy.

Some questions have arisen as to whether a lessee or tenant is to be compensated when he is turned out of his premises at the expiration of his lease or tenancy. If he is expelled before the expiration of his term, he is clearly

(*i*) Per Erle, C. J., in *Ricket* v. *Metropolitan Rail. Co.*, 34 L. J. Q. B. 257, 261.

(*k*) *Com. of I. R.* v. *G. & S. W. Rail. Co.*, 12 App. Cas. 321, per Halsbury, L. C.

(*l*) *Ripley* v. *Great Northern Rail. Co.*, L. R. 10 Ch. App. 436; *In re The Aire and Calder Navigation, R.* v. *JJ. of West Riding of York*, 1 A. & E. 563.

(*m*) *Stebbing* v. *Metropolitan Board of Works*, L. R. 6 Q. B. 37.

entitled; but not unfrequently the promoters of the undertaking acquire the reversion of the lands, and then determine the tenancy in ordinary course. Undoubtedly these lessees or tenants would not have had any claim against their landlord if he had so determined their tenancy or had refused to renew their lease; but nevertheless in all probability either their lease would have been renewed or their tenancy from year to year would have been allowed to continued. This probability or expectancy may be of value to them, and its destruction may seriously affect the goodwill of their business, inasmuch as they may be driven to a new locality where they are altogether unknown, and this would not have happened but for the execution of the proposed works. This chance of renewal very frequently influences sales; it is often an inducement to accept mortgages, and has long been recognized both in law and equity as of value (*n*). However, it would seem, according to existing decisions, that under the Lands Clauses Consolidation Act it is not a subject of compensation (*o*); while under other special Acts it has been allowed in some cases and refused in others, according to the words of the statute in each case. Thus, in one case, when a lease of seven years expired with the date of notice from the company, no compensation was given, although the lessee had expended large sums upon the land under a reasonable expectation of renewal (*p*); while under the Hungerford Market Company's Act (*q*), in which it was

(*n*) *Worral* v. *Hand*, per Lord Kenyon, Peake, N. P. 105; *Lee* v. *Vernon*, 5 Brown's Parl. Cases, 10.

(*o*) *Ex parte Nadin*, 17 L. J. Ch. 421, Cottenham, L. C.; *Reg.* v. *London & Southampton Rail. Co.*, 10 A. & E. 3; and see *Bogg* v. *Midland Rail. Co.*, L. R. 4 Eq. 310; *Doo* v. *Croydon Rail. Co.*, 8 L. J. N. S. Ch. 200; *Cranwell* v. *Mayor of London*, L. R. 5 Ex. 284, 287; 39 L. J. Ex. 193; *Syers* v. *Metropolitan Board of Works*, 36 L. T. 277; *Reg.* v. *Poulter*, 20 Q. B. D. 132; *Ex parte Merritt*, 2 L. T. 471.

(*p*) *Reg.* v. *Liverpool & Manchester Rail. Co.*, 4 A. & E. 650.

(*q*) 11 Geo. 4, c. lxx.

provided that all tenants for years, from year to year, or at will, "who shall sustain any loss, damage, or injury in respect of any interest whatsoever for goodwill, improvements, tenant's fixtures, or otherwise, which they now enjoy by reason of the passing of this Act" (*r*), shall be entitled to compensation, it was held that where a yearly tenant received a regular half-year's notice to quit that she was entitled to be compensated for the whole marketable interest which she had in the premises at the time the Act passed, and that the goodwill of premises on so uncertain a tenure was protected by the Act as an interest which would have been valuable as between the tenant and a purchaser, though it was not a legal interest as against the landlord. Chief Justice Tenterden, in his judgment, said that the words of the above section "must be understood as signifying that sort of right which an occupier usually has of parting with his tenancy to another person for such sum as he may be induced to give for goodwill, fixtures, and improvements, and which is often very considerable though the tenancy be only from year to year, where there is a confidence that it will not be put an end to" (*s*). And similarly, under the same Act, it was held that lessees were entitled to compensation though turned out at the end of their leases (*t*).

"Tied" public-houses.

Another subject of compensation in the nature of goodwill, but the benefit of which goes to the lessor and not to the lessee, is the advantage to the former of a contract by the latter to carry on his business subject to certain restrictions. Such covenants do not generally affect the value of the land, so as to be a cause of compensation; but in some cases it is otherwise, as, for example, in what are called

(*r*) 11 Geo. 4, c. lxx, s. 19.

(*s*) *Ex parte Farlow, In re Hungerford Market Co.*, 2 B. & Ad. 341.

(*t*) *Ex parte Gosling*, 4 B. & Ad. 596; *Ex parte Still, ibid.* 592.

"tied" public-houses. In these houses the lessee is bound to take all or a certain part of the beer he sells from his lessor or from some other named brewer. Such a covenant undoubtedly tends to make the premises of more value to the lessor, as he is able to gain a profit beyond that which he receives or would ordinarily receive as rent; and it has been held that in estimating the amount of compensation to be awarded for taking such premises, their additional value to the plaintiffs by reason of the contract to sell the lessor's beer only was to be taken into consideration, Blackburn, J., remarking: "This is a covenant annexed in actual enjoyment to the existence of the premises which the defendants have taken from the plaintiffs" (*u*).

Stamp.

It may be further noted that when lands are conveyed to a body under compulsory powers an *ad valorem* stamp duty must be paid on any sum that is assessed by the jury as compensation for loss of business or goodwill. This naturally follows from the proposition that it is land, and the right to the immediate occupation of the land, that can be and is purchased under these compulsory powers; and any sum paid in respect of goodwill is, therefore, merely part of the price to be paid for the land, and thus constitutes part of the consideration for the sale (*x*). It would also seem to follow that money paid for injuriously affecting land by severance, when part is taken, was part of the price of the land taken, and therefore subject to *ad valorem* duty.

SUB-SECT. (ii).—*Lands "Injuriously affected."*

Statutory provisions.

By sect. 68 of the Lands Clauses Consolidation Act, 1845, provision is made for the assessment of the damage

(*u*) *Bourne* v. *Mayor of Liverpool*, 33 L. J. Q. B. 15; and see cases on rating of "tied" public-houses later, p. 133.

(*x*) *Com. of I. R.* v. *Glasgow & South Western Rail. Co.*, 12 App. Cas. 315.

done to lands or to any interest in lands "*injuriously affected by the execution of the works.*" By sect. 6 of the Railways Clauses Consolidation Act, 1845 (*y*), after incorporating the Lands Clauses Consolidation Act, it is provided that the company shall make "to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purposes of the railway, or *injuriously affected* by the construction thereof, *full compensation for the value of the lands* so taken or used, and *for all damage sustained by such owners, occupiers, and other parties* by reason of the exercise, as regards such lands, of the powers by this or the special Act, or any Act incorporated therewith, vested in the company."

One or both of these statutes are now generally incorporated in private Acts, which provide for compulsory powers of purchase, and the greater proportion of the cases of this kind which have come into Court have required the interpretation of one or other of these sections. As we have already pointed out, there are certain Acts, such as the Metropolitan Improvement Acts (*z*), which contain no provision for the compensation for lands injuriously affected otherwise than by actual structural damages, and to these the following remarks do not apply.

Injury to goodwill.

Not unfrequently the injury to lands caused by alterations in the neighbourhood is of such a nature as to cause damage to the goodwill; that is to say, the alteration of the surroundings are frequently such as to render the lands or premises less suitable for the purposes of the business previously carried on, and the connection is destroyed.

(*y*) 8 & 9 Vict. c. 20; and see also sect. 16. In the Lands Clauses Consolidation (Scotland) Act there is no provision for compensation for lands injuriously affected; but such provision exists in the Railways Clauses Consolidation (Scotland) Act, 1845, s. 6.

(*z*) See *supra*, p. 112.

A shop, for example, which may have had a frontage on a leading thoroughfare may, after the execution of the works, have its frontage rendered of much less value, because of the deviation of the old thoroughfare. If this prevents the old customers from resorting thither, then there is real injury to the goodwill, but much of the injury, though calculated to injure the profits, is not really injury to the goodwill. Thus, the number of chance customers may be greatly diminished, or the increased difficulty of access may increase the cost of conveyance, and thereby reduce the profits. Goodwill, loss of profits, and similar terms, are not unfrequently used to express loosely what is clearly recognized as a real injury, although those who use them are not apt to define exactly what they mean thereby; but unless the different items of damage are referred to their respective sources, the difficulty of determining whether or not compensation ought to be awarded is materially increased.

Meaning of "lands injuriously affected."

Perhaps no words in a statute have given rise to more discussion and difference of opinion than these:—"*injuriously affected by the execution of the works.*" After numerous cases, some half dozen of which have been taken to the House of Lords, the general principles of compensation under this clause may be said now to have been made tolerably clear, although it is doubtful if two of the decisions in the House of Lords are quite reconcileable (*a*).

To trace the history of this discussion is not within the scope of this work; but it is proposed to indicate generally the principles of compensation, and to illustrate their application by cases in which questions relating to goodwill have arisen.

(*a*) *Caledonian Rail. Co.* v. *Ogilvy*, 2 Macq. 229; *Metropolitan Board of Works* v. *McCarthy*, L. R. 7 H. L. 243; and see per Lord Blackburn in *Caledonian Rail. Co.* v. *Walker's Trustees*, 7 App. Cas. 259, 294, 302.

What gives right to compensation.

The right, then, to compensation for "lands injuriously affected" exists only when the three following conditions are satisfied:—

(a) *The injury which is done must be such that a right of action would have accrued for the tortious act if the works had not been authorized by Parliament.*

(b) *The damage or injury must be a damage or injury by physical interference to land, or to some right, public or private, which the owners or occupiers are by law entitled to make use of in connection with such land, and which gives an additional market value to such land apart from the uses to which any particular owner or occupier might put it, and the property, as a property, is thereby lessened in value* (*b*).

(c) *The damage must be occasioned by the execution of the works, and not by their subsequent use* (*c*).

(a) *The act, if unauthorized, must give a right of action.*

Act must have been tortious if unauthorized.

This proposition was laid down, among the earlier cases, as the test of the right to compensation (*d*); and although doubts have been expressed by high authorities as to whether "it is not a test somewhat narrow" (*e*), it is, nevertheless, a test which has for many years formed the foundation for many decisions, and it has been finally adopted in recent cases in the House of Lords (*f*).

It is not always easy to say, however, whether or not an action would have lain in any particular case had the

(*b*) See per Cairns, L. C., *Metropolitan Board of Works* v. *McCarthy*, L. R. 7 H. L. p. 253.

(*c*) *Hammersmith Rail. Co.* v. *Brand*, L. R. 4 H. L. 171.

(*d*) *Ogilvy* v. *Caledonian Rail. Co.*, *supra*; *Re Penny*, 7 El. & Bl. 660; *Chamberlain's Case*, 2 B. & S. 605; *New River Co.* v. *Johnson*, 29 L. J. M. C. 93.

(*e*) Per Lord Westbury in *Ricket's Case*, L. R. 2 H. L. pp. 175, 201, 202.

(*f*) *Ricket's Case*, *supra*; *McCarthy's Case*, *supra*; and *Walker's Trustees*, *supra*.

works not been authorized, for usually the injury is done to the public generally, and the remedy would have been indictment; however, if the claimant can show that he has suffered an especial damage "more than" or "beyond" that of his fellow citizens, by reason of the interference with a public right, then he will have a good title to compensation (*g*). Thus, for example, if a highway is destroyed, all the public suffer to some extent; but if the access to a man's premises is rendered less easy, and their value is thereby diminished in the market, he suffers an injury more than the rest of the public, and has, consequently, a right to compensation. Of course the damage must not be too remote, and the usual rules as to remoteness of damage apply to claims for compensation (*h*).

It may be noticed that if the public body, whatever it may be, does any act beyond what it is authorized to do, or does an authorized act in a careless or improper manner, so that a third party is injured, then the remedy is not compensation, but an action for damages and an injunction. Thus, an action will lie for continuing an authorized obstruction for an unreasonable time to the injury of a man's trade (*i*).

(b) *The injury must be occasioned by physical interference with lands, or with some incident of land which gives an additional market value to such property apart from the uses to which it might be put by any particular owner.*

Physical interference with some incident of land.

This proposition was distinctly enunciated and laid down by the House of Lords in the case of *The Metropolitan* *McCarthy's Case.*

(*g*) *Dobson* v. *Blackmore*, 9 Q. B. 991; *Iveson* v. *Moore*, 1 Salk. 15; per Lord Penzance in *McCarthy's Case*, p. 263.

(*h*) *Clarke* v. *Wandsworth Local Board*, 17 L. T. N. S. 549.

(*i*) *Wilks* v. *Hungerford Market Co.*, 2 Bing. N. C. 281; and see

*Board of Works* v. *McCarthy* (*k*), and approved in the case of *The Caledonian Rail. Co.* v. *Walker's Trustees* (*l*). Previous to these decisions there had been considerable conflict of opinion as to whether, on the one hand, the injury must not have been to the land itself by some actual physical interference (*m*); or, on the other hand, whether it was not enough if the person in possession received injury without his lands or any legal interest in the land being interfered with (*n*). These latter injuries have been termed personal, inasmuch as no damage is done to the land or any right of way thereto or other easement; but they are to this extent connected with the land, that the persons suffered the injuries through and on account of their occupation of the lands. Take, for example, the usual class of case in which this question arose: public works are being executed; a highway is blocked so that access to certain shops and places of business is rendered so inconvenient that there is a serious falling-off in the business done there, due to some of the old customers going to other places, and the number of chance customers being reduced (*o*). Such an obstruction, if unauthorized, would have been actionable, and the lessee's interest is so far damaged that were he minded to assign his term he could not obtain as much therefor as he could have done prior to the obstruction; the goodwill, also, would fetch a smaller price. It was definitely decided,

*Geddis* v. *Proprietors of the Bann Reservoir*, 3 App. Cas. 430; *Truman* v. *L. B. & S. C. Rail. Co.*, 25 Ch. D. 423; reversed, 11 App. Cas. 45; *Clowes* v. *Staffordshire Potteries Waterworks Co.*, L. R. 8 Ch. App. 125.

(*k*) L. R. 7 H. L. 243.

(*l*) 7 App. Cas. 259.

(*m*) Per Lord Cranworth, in *Ricket's Case*, L. R. 2 H. L. 175, 198.

(*n*) *Senior* v. *Metropolitan Rail. Co.*, 32 L. J. Ex. 225; 2 H. & C. 258; *Cameron* v. *Charing Cross Rail. Co.*, 16 C. B. N. S. 430.

(*o*) See cases in last note; and *R.* v. *London Dock Co.*, 5 A. & E. 163; *R.* v. *Bristol Dock Co.*, 12 East, 429.

however, in *Ricket's Case* (*p*) that this gives no claim for compensation. In that case the streets leading to a public footway, by the side of which a public-house stood, had been obstructed, and the plaintiff had received serious injury by reason of the interruption to his business. In the lower Courts there was much difference of opinion, and the House of Lords decided against the claim by a majority of two to one (*q*). There has been much comment upon this decision, especially as it was thought that the dicta of the noble lords who were in the majority went further than the case required. This case has not, however, been departed from, although its principle has not been extended. It decides clearly that loss of trade or custom by reason of a work not otherwise directly affecting the house or land in or upon which a trade has been carried on, or not affecting any right properly incident thereto, is not by itself a proper subject of compensation (*r*). Therefore, it follows that the injury which the occupier receives to the goodwill of his business, if only the goodwill is injured, gives him no right of compensation. To call this a personal interest, as has been done, is confusing; for it is quite different from personal goodwill in the sense of the goodwill which a professional man or skilled workman may have, and which is seldom affected by the ease or difficulty of approach to his house. The goodwill of an ordinary trader to some extent depends on the convenience of his place of business for his customers; as, for example, in the case of a public-house. *Ricket's Case.*

In illustration of this, we may give a quotation from the judgment of Willes, J., in *Cameron* v. *The Charing Cross*

(*p*) L. R. 2 H. L. 175; and see *R.* v. *Vaughan*, L. R. 4 Q. B. D. 190.

(*q*) Lords Chelmsford and Cranworth, Lord Westbury dissenting.

(*r*) Per Lord Selborne, *Caledonian Rail. Co.* v. *Walker's Trustees*, 7 App. Cas. 259, 278.

*Rail. Co.* (*s*), a case overruled by the decision in *Ricket's Case:* "Damage to a man's interest in land," he said, "necessarily includes damage to the business which he carries on upon the land by diverting it from its accustomed channel. Such an interest is not merely personal; it is an interest which a man enjoys in respect of the land; a reasonable expectation of profit from the exercise of his abilities in some particular place by carrying on business there. That reasonable expectation of profit is commonly called 'goodwill,' and is a marketable thing."

Occupier's interest in goodwill not a subject of compensation.

Since *Ricket's Case*, however, it is clear that the occupier's interest in the goodwill is not of itself an interest in lands, damage to which gives a right to compensation as "lands injuriously affected." As we have already seen, when the house and land is compulsorily taken, this interest of the occupier in the goodwill is a subject for compensation.

But may be compensated for in connection with physical injury to land.

Although goodwill of itself is not a subject for compensation, there may, nevertheless, be cases in which the occupier will be entitled to compensation, and it is difficult to see how the injury to the goodwill can be excluded in computing the amount of that compensation (*t*). If the value of the land is lessened by reason of some *physical interference* with some right incident to the land, as if a public or private approach thereto is deviated or blocked, then there is a title to compensation. It is not even necessary that this injury should be permanent; if it is a physical interference, that is sufficient, whether it be temporary or permanent (*u*). Thus, the destruction of a water-way, upon which premises are situated (*x*); the

(*s*) 16 C. B. N. S. 430.

(*t*) *McCarthy's Case*, L. R. 7 H. L. 253; *Ford* v. *Metropolitan Board of Works*, 17 Q. B. D. 12; *Reg.* v. *Poulton*, 57 L. T. 488.

(*u*) *Caledonian Rail. Co.* v. *Walker's Trustees*, per Lord Selborne, 7 App. Cas. 259, 283; *Ford* v. *Metropolitan Board of Works*, 17 Q. B. D. 12.

(*x*) *McCarthy's Case*, *supra*.

narrowing of a highway in front of a house (*y*); the rendering of a road leading to premises steeper, and making the approach more difficult (*z*); the deviation of a highway, so that shops and houses previously situated on it are left some distance off from it (*a*); are all injuries to interests in land, whereby the market value, apart from the uses to which any particular owner might put it, is lessened, and a right to compensation exists.

Measurement of compensation.

How the amount of this compensation is to be measured is, however, a matter which has not been made clear. The market value of land never is the value apart from the uses to which any particular owner would put it. The market value is the precisely highest value which some particular person will give for it in order to put it to some particular use. If the access to the land is altered so that it is no longer capable of that use, then its market value will go down in proportion. Land is valued according to the uses to which it may be put, and to the reasonable expectation of profit from carrying on business upon it. Willes, J., seems to have felt that difficulty, for in *Beckett* v. *The Midland Rail. Co.* (*b*) he said: "It must be a damage which would be sustained by any person who was the owner, to whatever use he might think proper to put the property. Now that, of course, is to be taken with the limitation that a person who owns a house is not to be expected to pull it down in order to use the land for agricultural purposes. That would be pushing the judgment in *Ricket* v. *The Metropolitan Rail. Co.* to an absurd extent. The property is to be taken *in statu quo*, and to be considered with reference to the use to which any owner

(*y*) *Beckett* v. *The Midland Rail. Co.*, L. R. 3 C. P. 82.

(*z*) *Caledonian Rail. Co.* v. *Walker's Trustees*, 7 App. Cas. 259.

(*a*) *Chamberlain* v. *The West End of London Rail. Co.*, 2 B. & S. 605.

(*b*) L. R. 3 C. P. 82, 95.

might put it in its then condition, that is, as a house." This does not, however, do away with the difficulty; for the building might be rendered absolutely useless for the purpose for which it is constructed; as, for example, a dock warehouse, on the destruction of the dock, or, say, a water-mill when the stream of water is stopped. The damage occasioned to such buildings would be most serious, whereas if the land had been used for other purposes the damage might have been merely nominal. The decision in *Ricket's Case*, and the rule laid down by Lord Cairns in *McCarthy's Case*, give definite criteria by which it can be determined whether or not a right of compensation exists; but it is not quite clear how the amount of that compensation is to be estimated.

(c) *The damage must be occasioned by the execution of the works, and not by their subsequent use.*

Damage must be due to execution of the works.

This doctrine was authoritatively laid down by a majority in the House of Lords in *The Hammersmith Rail. Co.* v. *Brand* (*c*) (Lord Cairns dissenting). In that case damages were claimed for injury to a house and garden, by reason of the smoke, noise, and vibration caused by passing trains, and it was held that there was no right of compensation for any damage caused by the use and working of the line given by the Lands Clauses Consolidation or the Railways Clauses Consolidation Acts, whether the damage done was injury to land or otherwise. From this it follows that injury to the goodwill of canal traffic business, or to the trade of a carrier, or to that of a ferry (*d*),

(*c*) L. R. 4 H. L. 171; approving *R.* v. *Pease*, 4 B. & A. 30; and *Vaughan* v. *The Taff Vale Rail. Co.*, 5 H. & N. 679; and overruling *L. & N. W. Rail. Co.* v. *Bradley*, 3 Mac. & G. 336.

(*d*) *Hopkins* v. *Great Northern Rail. Co.*, 2 Q. B. D. 224; overruling *Reg.* v. *Cambrian Rail. Co.*, L. R. 6 Q. B. 422.

or to any other business, whether connected with land or otherwise, gives no ground of compensation either to the owner or occupier if caused by the use of the works which have been authorized by Parliament: always provided they are used properly according to the powers granted by the statute.

Sometimes it is not easy to determine whether the injury is caused by the works or by the use of them; but it would seem that the true test is to determine whether there would have been any injury if the works had been executed and then left unused; if so, then there is a right to compensation to the extent of the damage caused by the execution of the works (*e*). The argument, that the injury would not have happened unless the works had been constructed, and that, therefore, it was caused by the construction thereof, has been rejected as illogical (*f*).

### Sub-sect. (iii).—*Damage to Land by Severance.*

When part only of a man's land is taken and the remainder is left, he is entitled to be compensated both for the price of the land taken, for the damage caused to the remaining lands by reason of the severance, and also for the damage caused by injuriously affecting these lands (*g*).

Principles of compensation.

In determining whether lands have or have not been injuriously affected, much more liberal principles of compensation have been laid down than in the case of lands injuriously affected where no land is taken. In fact, it may be said that, practically, every form of damage to lands affords a ground for compensation. Thus, in *In re The*

(*e*) See, in *Caledonian Rail. Co.* v. *Walker's Trustees*, 7 App. Cas. 259, the discussion upon *Brand's* and *Ogilvy's Cases*.

(*f*) Per Lord Chelmsford in *Brand's Case*, L. R. 4 H. L. 171, at p. 204.

(*g*) Lands Clauses Consolidation Act, ss. 49, 63, 120, 121.

*Stockport, Timperley and Altringham Rail. Co.* (*h*), it was decided that the rule that compensation could only be given for that which, unless sanctioned by the private statute, would otherwise have been an actionable wrong, had no application to cases where the act complained of was done on the claimant's own land taken from him by the company by force of their statute. In *Buccleuch* v. *The Metropolitan Board of Works* (*i*) it was also held that, when lands were taken, the owner was to be compensated for loss of privacy to his mansion, and for the increase of dust and noise, caused by the use of the embankment and road for which the land taken was required; so that the condition that the injury must be caused during and by the construction of the works, and not by their subsequent use, would not seem to apply to cases where the land is severed. It is doubtful also to what extent the principle in *Ricket's Case* is applicable to cases of severance.

*Buccleuch* v. *The Metropolitan Board of Works.*

Lands must be contiguous.

It must be noticed, however, that, in order to give a title for compensation of this nature, there must be actual severance; the lands taken must be connected with or contiguous to the other lands of the owner, otherwise he will have no claim for injury done to these other lands by reason of the execution of the works beyond that to which he would have been entitled if no land had been taken (*j*). It is not necessary, however, that he should have the same legal interest in the land taken as in the land left to entitle him to compensation for severance; thus, if he have a leasehold interest in the land taken, and an interest in fee simple in the remainder, he will be entitled to compensation for injury to the latter (*k*).

(*h*) 33 L. J. Q. B. 251; and see *Reg.* v. *Essex*, 17 Q. B. D. 447.
(*i*) L. R. 5 H. L. 418.
(*j*) *Reg.* v. *Essex*, 17 Q. B. D. 447.
(*k*) *Holt* v. *Gas Light & Coke Co.*, 41 L. J. Q. B. 351; L. R. 7 Q. B. 728.

Questions of goodwill do not seem to have arisen very frequently under this head of compensation, but the capacity of the land for earning future profits must always enter into the calculation; as, for example, in the case of *Ripley* v. *The Great Northern Rail. Co.* (*l*), a railway company had taken lands on which cotton mills would probably have been built, and on the adjoining land the owner of both had built a reservoir from which water would have been supplied to such cotton mills had they been built; the Court held that he was entitled to be compensated for the loss of the prospective profits arising therefrom.

## Sect. III.—*Goodwill as affecting the Rateable Value of Land.*

Local goodwill rateable.

In the preparation of what are called "valuation lists" of lands and hereditaments, for the purpose of assessing rates, and for other similar public uses, the question of goodwill has not unfrequently arisen. In this connection goodwill is only of importance in so far as it is local; that is to say, in so far as it accrues to the land and passes with it. The value attaching to goodwill on account of a firm name, or trade-mark, seldom enters into the question unless where the name belongs to the house, as in the case of an hotel, tavern, or theatre (*m*), when it may be considered as adding some value to the premises; but generally the trade mark and trade name are independent of the place, so that the trader may transfer them to new premises. The value of goodwill, when it is merely personal and

(*l*) 10 Ch. App. 435.
(*m*) *Hudson* v. *Osborne*, 39 L. J. Ch. 79; and see cases cited in Chap. II.

dependent on covenants, of course has no bearing on the matter (*n*).

Rates calculated as rent.

In determining the value of lands and hereditaments, the rent at which the same might reasonably be expected to let from year to year is taken as the basis, and the annual or rateable value is deduced from this by making certain deductions, such as rates, taxes, and the average cost of maintenance (*o*). In calculating the rent, it is the rent of the lands or premises as they actually exist at the time that is estimated (*p*). What this rent may be is not, however, always easy to determine. As regards business premises and other lands rented for the purposes of making profits, the following remarks of Lord Blackburn are, in this connection, instructive:—"In letting a thing from year to year," he said (*q*), "the rent would be regulated by two matters; on the one hand, by the benefit the tenant would be likely to derive from the occupation, because he would not give more than that; on the other hand, by the nature of the property, such as its local situation, or how many persons there are who could supply him with an equally eligible thing and be willing to let it to him; for while he would not be willing to give more than he expected to make by it, he would not even give that if he could get a similar thing at a lower rent."

Goodwill increases rental.

The reputation which attaches to premises, because of some particular trade which has been carried on in them, will generally cause them to be of a greater yearly value. As has already been pointed out, this is the only proper meaning that can attach to goodwill considered as a matter assignable with the premises. The suitability of the situa-

(*n*) See a Scotch case, *Assessor of Lanark* v. *Selkirk*, 14 Rettie, 579.

(*o*) 6 & 7 Will. 4, c. 96, s. 1; 25 & 26 Vict. c. 103, s. 15.

(*p*) *The Att.-Gen.* v. *Sefton*, 32 L. J. Ex. 230.

(*q*) *Reg.* v. *L. & N. W. Rail. Co.*, L. R. 9 Q. B. 134.

tion and the adaptability of the premises for some particular trade, although sometimes loosely referred to as goodwill, are only factors in its creation. Sometimes the situation is such that it practically commands all the custom, as in the case of a canteen in barracks (*r*), or even in the case of licensed premises which are limited in number. In such instances the conveyance of the premises with the right to carry on the particular trade may convey pretty well all the old business connection, and the price payable on that account may be greatly increased. To the connection caused by this somewhat exclusive right of trading, the name "goodwill" is attached, although with doubtful correctness. Sometimes the term is applied to cases where the right to trade with certain persons is an absolute monopoly, as where the lessees of public-houses are bound to purchase their beer from a certain brewery. This, of course, is a purely personal arrangement, and although the result may be to increase the annual value of the brewery (*s*), it cannot be properly regarded as goodwill, because these publicans are left no choice in the matter. They do not go to the brewery from any good feeling towards the brewer, but because they are bound to do so by the covenants of their lease, and they have received some consideration by holding their premises at a rather reduced rent in consequence thereof.

"Tied" public-house.

With this last exception, it may be said that whenever goodwill exists in connection with premises enhancing their value, it is to be taken into account in determining their assessable value. The principle is, that in arriving at the annual value all the circumstances are to be taken into

(*r*) *R.* v. *Bradford*, 4 M. & S. 317.

(*s*) *Allison* v. *Monkwearmouth*, 4 Ell. & Bl. 13; but see *Sunderland* v. *Sunderland Union*, 18 C. B. N. S. 531; 13 L. T. 239; 34 L. J. M. C. 127.

consideration, and everything is rateable which is an incident naturally belonging to the premises (*t*).

Premium for leases to be taken into account.

Attempts are sometimes made to exclude these other incidents by the parties to leases agreeing that so much of the consideration shall be in the nature of rent and so much for goodwill, or for the right to carry on the business for which the premises are most suitable. This latter part of the consideration is sometimes paid annually, sometimes in a lump sum, when it is usually called a premium. In either case such payments should be taken into consideration in estimating the annual value (*u*). If a premium is paid, it is usual to divide the amount by the number of years in the term granted, and then add the quotient to the rent. The amount added should in fact be rather greater than the quotient, because of the interest that would have accrued on the amount. If these matters were not taken into account a door would be opened by which persons might escape from paying rates upon any sum except the amount stipulated for in the name of rent; the capacity of the subject for earning profits might be completely excluded from an estimate of its value.

The case of a brewery, and of "tied" public-houses which are connected with it, is different. The custom which the publicans bring to the brewery may certainly be assigned with the brewery, but it is not naturally incident thereto, being of the nature of a personal agreement. The decision in *Allison* v. *Monkwearmouth* (*x*), in which it was decided that an annual sum paid by the lessee of a brewery to the lessor, who was also owner of a number of such houses, for the custom and goodwill of these houses, was rateable, has

(*t*) *Reg.* v. *Coke*, 9 B. & C. 797; *West Middlesex Waterworks Co.* v. *Coleman*, 52 L. T. N. S. 578.

(*u*) See last case, and *R.* v. *Bradford*, 4 M. & S. 317; *Clark* v. *Fisherton-Auger*, 6 Q. B. D. 139.

(*x*) 4 Ell. & Bl. 13.

been much questioned, and the case of *Sunderland* v. *Sunderland Union* (*y*) is in direct conflict with it.

Rating of railways, &c.

As regards the rating of railways, canals, gas and water works, and similar public undertakings, carried out under private Acts of Parliament, the principle is the same. The rent is calculated at that at which their land and premises would let in the state in which they actually exist, the yearly tenant having the same powers and advantages as the occupiers (*z*). To determine what such rent would be is a matter of considerable difficulty and complexity. The usual method is to take the gross profits derived from the works, to deduct therefrom working expenses, and from the net receipts to make various deductions, such as interest on capital invested, a percentage on the same for tenant's profits, and depreciation of rolling-stock. It has been twice contended, but without success, that goodwill should also be a subject of deduction (*a*).

Claim to deduct goodwill not allowed.

In *Reg.* v. *Mile End Old Town* (*a*) it was claimed, in the case of a waterworks company, that some allowance should be made for goodwill, and the company defined such goodwill as being "the pecuniary value of the advantage which a lessee or assignee of the company derives from his enjoyment of an established business, and customers already secured" (*b*). Undoubtedly this goodwill is a matter of considerable value, as there is a great difference between the value of lands and premises, and works thereon, just after the works have been completed, and the value of them as a going concern when the business has been car-

(*y*) 18 C. B. N. S. 531; 13 L. T. 239; 34 L. J. M. C. 121.

(*z*) *Reg.* v. *The Grand Junction Rail. Co.*, 4 Q. B. 18; *Reg.* v. *North Staffordshire Rail. Co.*, 30 L. J. M. C. 68; *Reg.* v. *Brighton Gas Light & Coke Co.*, 5 B. & C. 466.

(*a*) *Reg.* v. *Mile End Old Town*, 10 Q. B. 208; *Reg.* v. *The Grand Junction Rail Co.*, 4 Q. B. 18.

(*b*) 10 Q. B. 213.

ried on for some time. This goodwill, however, is naturally incident to, and cannot be separated from, the possession of the lands as long as the possessor has the right to use and enjoy them, as they have been used and enjoyed. The goodwill accrues to them and adds to their value, very much in the same way as it does to the value of a public-house. To deduct goodwill would, therefore, be to do very much the same thing as to allow the lessee of a public-house a reduction from his rent because part was given for the right to carry on his particular trade.

Valuation roll in Scotland.

In Scotland, in the preparation of what is there called the "valuation roll," for the purposes of assessment goodwill is treated, with one exception, on the same principles as in England. Payments by way of premium, or made annually under the name of goodwill, are included in the estimation of the rent, whenever such goodwill belongs and is incident to the land (*c*); but it is not included when it is merely personal (*d*). It is provided by the statute (*e*), that, in estimating the yearly value of lands and heritages, the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year." . . . "And where such lands and heritages are *bonâ fide* let for a yearly rent conditioned as the fair annual value thereof, without *grassum* or consideration other than the rent, such rent shall be deemed and taken to be the yearly rent or value of such lands and heritages in terms of this Act." In this latter case, however, it is only to be taken as the yearly rent when the lease is for a period not greater than twenty-one years.

Different

We have, then, this difference between the Scotch and the

(*c*) *Drummond* v. *Assessor of Leith*, 13 Rettie, 540; *Glasgow Iron Co.* v. *Campbell*, 11 Mac. 989.

(*d*) *Assessor of Lanark* v. *Selkirk*, 14 Rettie, 579.

(*e*) 17 & 18 Vict. c. 91, s. 6.

English laws, that in the case of such leases in Scotland, if it happen that the premises should rise in value during the existence of the lease by reason of the creation of goodwill, or otherwise, this does not affect the valuation as entered on the valuation roll; so that if a tenant is able to sell the unassigned portion of his lease and the goodwill attaching to the business he has carried on therein, the sum paid is not taken into account in fixing the value of the premises for rating purposes (*f*). The rent is taken practically as the value of the premises to the landlord. In England this would be taken into account. from English law.

(*f*) *Assessor for Kilmarnock* v. *Allan*, 14 Rettie, 581; *Nicolson* v. *Assessor for Port Glasgow*, 23 Sc. Law Rep. 603; *Assessor for Kilmarnock* v. *M'Nally*, 14 Rettie, 582.

## CHAPTER VII.

### AGREEMENTS IN RESTRAINT OF TRADE.

Rights of vendor of a goodwill.

THE vendor of the goodwill of a business, as has been already pointed out, is at liberty after the sale to set up in any place a business similar to the one he has sold, and he may solicit his old customers, either publicly or privately. He is, in fact, under no restriction as to trading other than that imposed upon every other citizen; he may not represent, or do any act that tends to represent, that he carries on the same identical business as before; but beyond that he is free to trade as he may please (*a*).

Necessity to restrain vendor's rights of trading.

It becomes, therefore, in many cases, most important that the purchaser of the goodwill of a business should require the vendor to enter into covenants by which he binds himself not to trade within a certain area for a certain time, otherwise the purchaser, while acquiring certain material advantages for the purposes of his trade in the nature of convenient premises, may, nevertheless, find himself unable to obtain therefrom that which he had expected, namely, the transfer of the goodwill of the customers from his predecessors to himself. Some of the goodwill he may obtain, but it is such a personal matter in many instances, that if the vendor set up a rival business in the vicinity, he may be able to retain much, if not all, his old connection.

(*a*) See Chap. II.

Covenants and agreements of this kind, and with this object, are perfectly legal, although when in general or absolute restraint of trade they have always been considered, according to English law, to be void (*b*). The reason why the latter are void is that it is one of the conditions of civil liberty that every man shall have the right to work and to maintain himself by the result of his labours. If a man has been initiated into the mystery of a trade, and he is prevented from practising that trade, it is a loss alike to the individual and to the State. In the case of partial covenants the individual may be the gainer; as, for example, when an apprentice is required to bind himself not to set up a rival business to his master; for, if the master was unprotected by such condition, he would keep back from his pupil many of the technicalities of the trade, and the apprentice would thus leave his master improperly trained for that class of work. Similarly, in the case of a man desirous of retiring from a business, if he were not able to enter into such a covenant, he would be unable to realise the results of the labour and money he had expended in getting up the business and forming a connection.

Covenants in absolute restraint are void; if partial legal.

James, L. J., in *Leather Cloth Co.* v. *Lorsont* (*c*), stated the principle very clearly as follows:—"The principle is this," he said, "public policy requires that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the State of his labour, skill, or talent by any contract that he enters into. On the other hand, public policy requires that when a man has by skill, or by any other means, obtained something which he wants to sell, he should be at liberty to sell it in the most

The principle stated.

(*b*) *Dyer's Case*, 2 Hen. 5, fo. 5, pl. 26 (1415); and see *Ipswich Tailors' Case* (1614), 11 Rep. 53 (b).

(*c*) L. R. 9 Eq. 345.

advantageous way in the market; and, in order to sell it most advantageously in the market, it is necessary that he should be able to preclude himself from entering into competition with the purchaser."

Historical.

Acting, therefore, on this principle of public policy, English Courts have, from the time of the earlier Stuarts, supported contracts in partial restraint of trade whenever it appeared that they were reasonable, and that the covenantor was thereby benefited (*d*). Thus, for example, in the case of *Prugnell* v. *Gosse* (*e*), in the time of Charles I., a covenant was held good in an agreement by which the defendant agreed to assign her shop to the plaintiff, and not to carry on her trade in Basingstoke, in consideration of the plaintiff marrying her daughter. The decisions in Elizabeth's reign upon such covenants were all the other way, however, and the change of judicial opinion which occurred about this time seems indicative of the growing commerce of England. It has been pointed out that no consideration was disclosed to the Court in these cases (*f*); but whether this was the *ratio decidendi* or not does not appear, and it is clear that a consideration was implied, at least in some of the cases. Thus, in one case in Moore's Reports (*g*), an apprentice in the business of a mercer at Nottingham was sued for debt upon an obligation that he would not carry on his trade at Nottingham for four years, and the action was held not to be maintainable, as the covenant was bad (*h*).

*Mitchell* v. *Reynolds.*

There was considerable confusion, however, upon the

(*d*) *Rogers* v. *Parry*, 2 Bulst. 136; *Broad* v. *Jollyfe*, Cro. Jac. 596; Noy, 98; *Bragg* v. *Stanner*, Palm. 172.

(*e*) 24 Car. Rot. 217; Alleyn's Rep. 57.

(*f*) Per Lord Macclesfield, in *Mitchell* v. *Reynolds*, 1 P. Wms. 181; 1 Sm. L. C. 430.

(*g*) Moore's Rep. 115, 20 Eliz.

(*h*) Moore's Rep. 242, 29 Eliz.; Leon. 210, S. C.; *Colgate* v. *Bachelor*, Cro. Eliz. 872.

question until the case of *Mitchell* v. *Reynolds* (*i*) came before the King's Bench in 1711, when Lord Macclesfield, after an elaborate discussion of the previous cases, extracted therefrom principles which, though somewhat modified, have formed the basis of most subsequent decisions. He began his judgment by shortly stating the opinion of the Court as follows: "Whenever a sufficient consideration appears to make it a proper and useful contract, and such as cannot be set aside without injury to a fair contractor, it ought to be maintained; but with this constant diversity, viz., where the restraint is general, not to exercise a trade throughout the kingdom, and where it is limited to a particular place, for the former of these must be void, being of no benefit to either party and only oppressive." And he concluded his judgment thus: "To conclude: in all restraints of trade, where nothing more appears, the law presumes them bad; but if the circumstances are set forth, that presumption is excluded, and the Court is to judge of these circumstances and determine accordingly, and if upon them it appears to be a just and honest contract, it ought to be maintained."

In *Chesman* v. *Nainby* (*k*), a case which went up to the House of Lords in 1726, the law laid down in *Mitchell* v. *Reynolds* was approved and accepted.

Law as laid down in *Mitchell* v. *Reynolds*, and earlier cases.

According to the law of these earlier cases there existed a presumption that every contract in restraint of trade was void; but the presumption could be rebutted by showing that these conditions had been fulfilled, viz.:—

(1.) That there had been an *adequate consideration*.

(2.) That the restraint was *partial*.

(3.) That the restraint was *reasonable*.

Recent modifications.

This is not, however, the law as it stands at present.

(*i*) *Supra*.

(*k*) 2 Ld. Raym. 1456; Stra. 739.

These decisions were based upon what was then the public policy of the country—a somewhat variable quantity; but as the increase of commerce, the extended facilities for transport and communication, and the expansion of the British Empire, alter the conditions of our life, and therefore of our policy, so also all laws change which are framed to express and give effect to that policy. These conditions have been therefore considerably modified.

The presumption of legality.

In the first place the *presumption* is no longer so strong against the contract. Formerly, the person setting up the agreement had to show that all the conditions had been complied with. Now, that burden of proof is shifted, as soon as it has been shown that the contract has been entered into for the protection of the interest of one of the parties, and it lies on his opponent to show the unreasonableness (*m*).

The adequacy of the consideration.

Again, the Courts will no longer inquire into the adequacy of the consideration. This would amount to the Court making the bargain for the parties. It is sufficient if a real and *bonâ fide* consideration exists (*n*).

Partiality of restraint.

As to whether or not the restraint must be *partial* there is some doubt, or rather there seems to be some doubt, as to the meaning of the word "partial." In *Mitchell* v. *Reynolds* (*o*) there was no doubt that the Court thought that the restraint must be limited in space, and that rule has been continually repeated; thus, Wickens, V.-C., in 1872, in *Allsop* v. *Wheatcroft* (*p*), said that "a covenant not to carry on a lawful trade unlimited as to space is on the face of it void." In a few cases, however, the limit as

(*m*) Per Fry, L. J., in *Davies* v. *Davies*, 36 Ch. D. 397; *Mallan* v. *May*, 11 M. & W. 653; *Rousillon* v. *Rousillon*, 14 Ch. D. 351.

(*n*) *Collins* v. *Locke*, 4 App. Cas. 674; *Hitchcock* v. *Coker*, 6 A. & E. 438; *Archer* v. *Marsh*, 6 A. & E. 959, 966; *Pilkington* v. *Scott*, 15 M. & W. 657.

(*o*) 1 Sm. L. C. 417.

(*p*) L. R. 15 Eq. 59; and see *Ward* v. *Byrne*, 5 M. & W. 548.

to space has not been regarded as necessary. In *Whittaker* v. *Howe* (*q*) a covenant to restrain a solicitor from practising within the kingdom for a period of twenty years was held good; in *Leather Cloth Co.* v. *Lorsont* (*r*), upon the assignment of a trade secret, the vendors agreed not to carry on the trade connected therewith in any part of Europe, and this was not declared void; and in *Rousillon* v. *Rousillon* (*s*) the defendant agreed not to establish himself nor to associate himself with other persons or houses in the champagne trade for ten years after leaving the plaintiff's firm, an agreement which was also supported. In the first and third of these cases the covenant was, however, limited as regards time, and as to the second, being in connection with a trade secret, the principle of partiality may be held not to apply (*t*). The whole question, as to whether in such contracts the restraint must be partial, was discussed, though not decided, by the Lords Justices in *Davies* v. *Davies* (*u*). Cotton, L. J., maintained that the old doctrine, that a restraint must be partial, was still in force, but seemed to consider that it need not be necessarily confined to space. There may be limits in respect of time or to a class of persons as the customers of covenantee (*x*), or in relation to some specific invention, as a covenant not to sell certain machines without that invention attached (*y*). The opinion expressed by James, L. J., in *The Leather Cloth Co.* v. *Lorsont* (*z*), and by Fry, L. J., in *Rousillon* v. *Rousillon* (*a*), and in *Davies* v. *Davies* (*u*), was, however, that the sole and true criterion as to whether a restraint on trade was void or not is its

Trade secret.

*Davies* v. *Davies*.

(*q*) 3 Beav. 383.
(*r*) L. R. 9 Eq. 345.
(*s*) 14 Ch. D. 351.
(*t*) See *Bryson* v. *Whitehead*, 1 S. & S. 74; *Hogg* v. *Darley*, 47 L. J. Ch. 567.
(*u*) 36 Ch. D. 359.
(*x*) *Rennie* v. *Irving*, 7 M. & Gr. 969; *Nichols* v. *Stretton*, 10 Q. B. 346.
(*y*) *Jones* v. *Lees*, 1 H. & N. 189.
(*z*) L. R. 9 Eq. 353.
(*a*) 14 Ch. D. pp. 351, 368.

*reasonableness* for the protection of the parties in dealing legally with some subject-matter of contract. It cannot, however, be said definitely that in such contracts the doctrine of partiality is not still followed; but the test of reasonableness will almost certainly imply partiality of some kind.

Reasonableness of restraint.

As to whether the restraint is *reasonable* or not is a question depending in each case upon the nature of the business to be protected. The limits of space and time may vary considerably with different kinds of business and at different periods of history. The generally accepted rule as to reasonableness was laid down by Lord Chief Justice Tindal in *Horner* v. *Graves* (*b*):—"The question is," he there said, "whether this is a reasonable restraint of trade. And we do not see how a better test can be applied to the question, whether reasonable or not, than by considering whether the restraint is such only to afford a fair protection to the interests of the parties in favour of whom it is given, and not so large as to interfere with the interests of the public. Whatever restraint is larger than the necessary protection of the party can be of no benefit to either; it can only be oppressive; and if oppressive it is in the eye of the law unreasonable. Whatever is injurious to the interests of the public is void on the grounds of public policy."

Test of reasonableness.

The same judge repeated the doctrine in *Hitchcock* v. *Coker* (*c*), and his remarks have been quoted with approval by many judges and text writers (*d*).

Cases when restraints held good.

To apply this test in practice is frequently no easy matter. "No certain precise boundary can be laid down

(*b*) 7 Bing. 755.

(*c*) 6 Ad. & E. 438, 454.

(*d*) See per Parke, B., in *Ward* v. *Byrne*, 5 M. & W. 548, 561; and in *Mallan* v. *May*, 11 M. & W. 665; and see Sm. L. C., notes to *Mitchell* v. *Reynolds*.

within which the restraint would be reasonable and beyond which excessive." As a guide, however, in determining this question, the reader is referred to the notes to the case of *Avery* v. *Langford* in Kay's Reports (*e*), where a fairly complete list of the cases on this subject down to 1854 are set out, giving the limits in space and time and the decision. Mr. Pollock, in his work on Contracts, has continued the list down to 1885 (*f*). In no one profession or kind of business can any rule be enunciated; but inasmuch as covenants of this kind are more frequent in the case of professional practices, it may be of use to indicate here some of the stipulations which have been disputed in Court.

In medical practices.

In the case of *medical men*, *surgeons*, &c., we find that the following contracts have been held not unreasonable:—

(1.) Not to practise as a surgeon, &c., for fourteen years within ten miles of Thetford (*g*).

(2.) Not to practise at any time as surgeon or apothecary at Macclesfield, or within seven miles thereof (*h*).

(3.) Not at any time to practise nor reside at No. 28, Dorset Crescent, nor within two and a-half miles thereof, measured by the usual streets or ways of approach (*i*).

(4.) Not to carry on or exercise the practice or the profession of a surgeon or apothecary, either by residing or visiting any patient within the distance of

(*e*) Page 663.

(*f*) Page 316, 4th ed.; and see also Benjamin on Sales, 4th ed. pp. 505,516. Among recent cases are:—*Davies* v. *Davies*, 36 Ch. D. 359; *Parson* v. *Cotterell*, 56 L. T. 839; *Nicoll* v. *Beere*, 53 L. T. 659; *Baker* v. *Hedgecock*, 57 L. J. Ch. 889; *Baines* v. *Geary*, 35 Ch. D. 154.

(*g*) *Davis* v. *Mason*, 5 T. R. 118 (1793).

(*h*) *Sainter* v. *Ferguson*, 7 C. B. 716 (1849).

(*i*) *Atkins* v. *Kinnier*, 4 Exch. 776.

three miles from the present place of business in Park Street, Camden Town (*k*).

(5.) Not to practise or carry on the professions of surgeon or apothecary within the parish of Newick, or within the distance of ten miles thereof (the town of Lewes excepted), during the time the covenantee or assignee carried on the business (*l*).

Precedents. The reader may find the agreements in the reports of the last four of these cases valuable as precedents.

Dentists. In the case of *dentists*, a covenant not to practise as a dentist in London during covenantor's lifetime was held valid (*m*); but the further restriction against practising in any of the towns or places in England or Scotland in which the covenantee might have been practising, was held bad. A covenant not to practise as a dentist during the lifetime of covenantee at or within 100 miles of York was also held bad (*n*).

Chemists. In the case of *chemists*, a bond by an apothecary not to set up business within twenty miles of A. was held good (*o*).

Attorneys. In the case of *attorneys*, a wider limit in space is allowed, owing to the nature of the business being such that it can be carried on by correspondence. The following covenants have been held valid:—

(1.) Not to practise in London, or 150 miles from thence (*p*).

(2.) Not to practise for twenty years in Great Britain (*q*).

(*k*) *Rawlinson* v. *Clarke*, 14 M. & W. 187.

(*l*) *Gravely* v. *Barnard*, 18 Eq. 518.

(*m*) *Mallan* v. *May*, 11 M. & W. 653.

(*n*) *Horner* v. *Graves*, 7 Bing. 735.

(*o*) *Heyward* v. *Young*, 2 Chit. 407.

(*p*) *Bunn* v. *Guy*, 4 East, 190.

(*q*) *Whittaker* v. *Howe*, 3 Beav. 383.

(3.) Not at any time to be concerned as attorney for any person who had already been, or who should from time to time thereafter become or be, the client of the covenantee (*r*).

(4.) Not to practise at any time within the city of London or the counties of Middlesex and Essex, nor to act for any of the partners of the covenantee (*s*).

(5.) Not to carry on such business for twenty-one years in the parish of Torquay, or within twenty-one miles thereof (*t*).

Construction of agreements.

In construing these covenants the Courts are governed by one or two rules which have been laid down from time to time. Thus, if the covenant is good in part, but bad as to the rest, the Courts will uphold the part that is good if it can be separated from that which is void, and a breach of the good part will be restrained. This was first decided in regard to covenants in restraint of trade in *Chesman* v. *Nainby* (*u*), where the condition of a bond by the defendant was, that she would not be concerned in, or assist, or instruct any person to carry on, the business of linen-draper within half-a-mile of the plaintiff's then dwelling-house, or of any other house she or her executors or administrators should remove to. The defendant instructed her husband in the trade within half-a-mile of the plaintiff's then house. Judgment was given for the plaintiff, on the ground that the covenant was good as far as the breach went, and the legal part could be separated from

Good part separable from the void part.

(*r*) *Nichols* v. *Stretton*, 10 Q. B. 346. See this case for precedent of a covenant in case of attorney. See also *Galsworthy* v. *Strutt*, 1 Exch. 659.

(*s*) *May* v. *O'Neill*, 44 L. J. Ch. 660.

(*t*) *Dendy* v. *Henderson*, 11 Ex. 194.

(*u*) 2 Ld. Raym. 1456; Strange, Rep. 739.

the illegal. The same principle has been followed in several other cases (*x*).

Rule for measuring distances.

In contracts where the distance is to be measured, the Courts have laid down the rule that the measurement is to be made in a straight line from point to point (*y*). In some cases the method of measurement is stated. Thus, in *Atkins* v. *Kinnier* (*z*), the distance was to be measured by the "usual streets or ways of approach;" this was held to mean not by the principal thoroughfares, but by any of the usual public ways.

Surrounding circumstances taken account of in construction.

The Courts, also, in construing these agreements, have generally taken into consideration the surrounding circumstances at the time when the contract was entered into, and covenants have been sometimes restricted by the recitals, although never enlarged thereby (*a*). Thus, in *Avery* v. *Langford* (*b*), the condition of a bond was that the defendant would not be "concerned in any trading establishment" within certain limits. The Court considered the words "trading establishment" to mean an establishment for any trade likely to interfere with the goodwill which was the subject of sale, and, holding that the condition was not too general, decreed specific performance. In a more recent case of *Baker* v. *Hedgecock* (*c*), however, Chitty, J., held a covenant void by which a foreman cutter to a tailor agreed, upon quitting his master's service, not to enter "into any engagement or be concerned in carrying on any business whatsoever," within certain limits of space and time, inasmuch as it could not be construed as refer-

(*x*) *Mallan* v. *May*, 11 M. & W. 653; *Green* v. *Price*, 13 M. & W. 695; *Nichols* v. *Stretton*, 10 Q. B. 346, 350; *Collins* v. *Locke*, 4 App. Cas. 674; *Baines* v. *Geary*, 35 Ch. D. 154.

(*y*) *Duignan* v. *Walker*, 1 Johns. 446; *Mouflet* v. *Cole*, L. R. 7 Ex. 70; 8 Ex. 32.

(*z*) 4 Exch. 776.

(*a*) See per Page-Wood, V.-C., in *Bird* v. *Lake*, 1 H. & M. 338.

(*b*) Kay, 663.

(*c*) 57 L. J. Ch. 889.

ring only to the business of a tailor. If the terms of the contract are too vague, the Court will not define them with the help of the recitals; thus, in *Davies* v. *Davies* (*d*), the Court upon this ground refused to enforce a contract by which the defendant agreed "to retire from the business so far as the law allows."

Circumstances at time of execution to determine the validity.

The validity of a contract in restraint of trade must also be decided according to the circumstances of the time at which it was executed; for although subsequent facts may determine it, they cannot affect its original validity as a contract. Thus, a condition that the obligor shall not carry on business at any time, means during the life of the obligor, and its validity is not affected by the death of the obligee, even although the obligor might have carried on this business with the consent in writing of the obligee (*e*).

Breaches of contract in restraint of trade.

Questions frequently arise as to what amounts to a breach of a contract in restraint of trade. In each case, of course, the answer must depend upon the exact words of the covenant or condition; but some general idea may be gathered from the decisions of the lines upon which the covenants proceed.

Acting as servant may not be a breach.

A common form of alleged breach occurs when the covenantor, after selling his business to, or leaving the employment of, the covenantee, becomes the servant or assistant of another within the prescribed limits. Where the business is trading, and the covenant is merely that the covenantor will not exercise or carry on a certain trade, either in his own name or in that of any other person, then it will be no breach to act as agent or manager of a similar kind of business belonging to another

(*d*) 36 Ch. D. 359.

(*e*) *Hastings* v. *Whiteley*, 2 Ex. 611; and see *Benwill* v. *Inns*, 24 Beav. 307, 311; *Elves* v. *Croft*, 10 C. B. 241.

As professional assistant.

person (*f*). In the case of a profession, however, it was decided, in *Palmer* v. *Mallett* (*g*), that an agreement not to practise within certain prescribed limits would be broken by acting as salaried assistant to another within that distance. In that case the defendant was acting as assistant to one of two co-partners after the firm had been dissolved. The bond by which the defendant was bound not to practise within certain limits was given to the partnership. On the dissolution, it was held that both partners were entitled to the benefit of it, and that to act as an assistant to one was a breach thereof. "'Profession,'" said Cotton, L. J., "is different from trade, and is much more emphatic to my mind than if 'business' alone were here. When, as here, the words 'carry on the business or profession of a surgeon' are merely used to denote what is done by a man acting as a surgeon, a man, in my opinion, acts as surgeon and carries on the business of a surgeon none the less because he is not the principal or engaged in the business as a partner, but is merely carrying it on as assistant to someone else" (*h*).

Cases in which acting as a servant is a breach.

Covenants are, however, usually drawn wide enough to prevent the covenantor becoming a servant to another, and in that way rendering the covenant useless as a protection to the business. Thus, in *Dales* v. *Weaber* (*i*), the defendant was restrained from acting as a manager to another within the prescribed distance, as this amounted to a breach of a covenant that he would not, "directly or indirectly, either alone or in partnership with, or with the assistance of, any other person, set up or follow or practise the said business of optician within a radius of five miles from 129, Oxford Street."

(*f*) *Allen* v. *Taylor*, 19 W. R. 35; *Clarke* v. *Watkins*, 11 W. R. 319.

(*g*) 36 Ch. D. 411.

(*h*) *Ibid.* p. 422.

(*i*) 18 W. R. 993.

Similarly, in *Newling* v. *Dobell* (*k*), where a tailor, who had sold the goodwill of his business, covenanted not to "carry on or be concerned or interested in" the business of a tailor within a fixed distance of his former shop, he was restrained from engaging himself as a journeyman tailor to his nephew, who carried on the same trade under the same name within the prescribed limits.

In *Rolfe* v. *Rolfe* (*l*) the covenantor covenanted not to carry on, practise, or engage in the business of a tailor, either alone or with any other person, within a certain limit. He became foreman to another tailor within the limit, and this was considered a breach (*m*).

Strict construction.

These agreements are also usually, in considering what is a breach, construed strictly. Thus, a condition in a bond that the defendant should not "travel for any porter, ale, or spirit merchant as agent, collector, or otherwise," was not considered broken by his entering into the service of a brewer as a traveller (*n*). Bramwell, B., in this case remarking, that "a merchant of or in an article is one who buys and sells it, and not the manufacturer selling" (*o*). On the other hand, a covenant in the deed of purchase of the business of a horsehair manufacturer not to carry on the trade of a horsehair manufacturer, was construed to prevent the covenantor buying and selling horsehair (*p*).

Again, a covenant by a lessor, upon a demise of an eating-house for twenty-one years, that he would not, during the term, let any house in the same street for the

(*k*) 38 L. J. Ch. 111.

(*l*) 15 Sim. 88.

(*m*) See also *Jones* v. *Heavens*, 4 Ch. D. 636; *Hill* v. *Hill*, 35 W. R. 137; *Ward* v. *Byrne*, 5 M. & W. 548; *Cooper* v. *Watson*, 3 Doug. 413.

(*n*) *Josselyn* v. *Parson*, L. R. 7 Ex. 127.

(*o*) *Ibid.* p. 129.

(*p*) *Harms* v. *Parsons*, 32 Beav. 328; 32 L. J. Ch. 247.

purpose of carrying on the business of an eating-house, was held not to be broken by his letting a house to another under a covenant not to carry on any trade or business therein, without the lessor's licence, even although the assignee of this second term carried on an eating-house; inasmuch as the lessor had not let the house for this purpose (*q*).

Waiver of breach.

Comparatively slight circumstances will also be taken as amounting to a waiver of the breach of the agreement. Thus, in *Capes* v. *Hutton* (*r*), the father of the defendant had covenanted that his son should, within a month after his coming of age, execute a bond to insure the fulfilment of a proviso in his articles as clerk to an attorney, that he would not practise within a certain distance. The defendant, who was an infant at the time of the execution of the articles, served under them for three years after he attained his full age, but was never called on to execute any bond. After completing his clerkship, and with full knowledge of the purport of the articles, he began to practise as an attorney within the prescribed distance. Upon motion to restrain him from so doing, Lord Eldon refused an injunction.

Also, in *Maythorne* v. *Palmer* (*s*), where the defendant had covenanted not to enter into the service of a coach-builder within a certain area, and had done so, and continued therein for nine months to the knowledge of the plaintiff; a bill for an injunction was dismissed on the

(*q*) *Kemp* v. *Bird*, 5 Ch. D. 549; but see *Jay* v. *Richardson*, 30 Beav. 563; *Rolls* v. *Miller*, 27 Ch. D. 71, and cases there cited; *L. & N. W. Rail. Co.* v. *Garnett*, L. R. 9 Eq. 26; *London, &c. Building Co.* v. *Field*, 16 Ch. D. 645, and cases there cited; *Holt* v. *Collyer*, 16 Ch. D. 718.

(*r*) 2 Russ. 357. See *Cornwall* v. *Hawkins*, 41 L. J. Ch. 435, where an injunction was granted against the defendant, who had misrepresented his age, and had covenanted while a minor.

(*s*) 11 L. T. N. S. 261.

ground that the plaintiff must be treated as having acquiesced in the arrangement (*t*).

Residence within a certain area may be restrained.

On the sale of professional businesses or practices the covenant very often is, that the vendor shall not practise nor *reside* within certain limits. In such cases the Court will issue an injunction to restrain residence within the prescribed distance, although no damage can be proved—"not because the act is of itself injurious, but because it is a sort of guard or fence to prevent something else which is injurious from being done," and that something else has reference to the benefit of the business (*u*).

For the same reason, in *Rogers* v. *Drury* (*x*), the vendor of a medical practice was restrained from attending patients within the prescribed radius who, unsolicited, had called him in, even although they stated that they would in no event have called in the purchaser. In *Rawlinson* v. *Clark* (*y*) the defendant had attended several patients within the district, but as he had done so at the plaintiff's request, and with his knowledge and consent, for the purpose of assisting the plaintiff, it was held that the facts did not constitute a breach.

Place of business without area, supplying customers within.

An agreement not to carry on or set up a business within a certain distance of the premises assigned, has also been held to be broken if the covenantor, while having his place of business outside the limits, supplied goods to customers residing within these limits (*z*). A covenant, however, not to be engaged in a specified trade, "or in any matter

(*t*) See *Doggett* v. *Ryman*, 17 L. T. N. S. 486; *Rawlinson* v. *Clark*, 14 M. & W. 187.

(*u*) *Atkyns* v. *Kinnier*, 4 Exch. 776; *Dendy* v. *Henderson*, 11 Exch. 194; 24 L. J. Ex. 324, 326.

(*x*) 57 L. J. Ch. 504.

(*y*) 14 M. & W. 187.

(*z*) *Turner* v. *Evans*, 2 El. & Bl. 512; *Brampton* v. *Beddoes*, 13 C. B. N. S. 538. For other cases of breach, see *Wolmerhausen* v. *O'Connor*, 36 L. T. 921; *Williams* v. *Williams*, 2 Swanst. 253; *Davis* v. *Penton*, 6 B. & C. 216.

or thing whatsoever relating thereto," within a given district, does not prevent the covenantor from lending money to a person engaged in such trade within the limits upon mortgage of his trade premises, although he may know that the mortgagor has no means of paying the debt except out of the profits of the business. If the mortgage expressly charged the debt upon the profits it might be otherwise (*a*).

Cases in Scotland.

In Scotland, the validity of agreements in restraint of trade has not been the subject of much litigation. As far as the decided cases go, practically the same principles have been adopted there as in England, and the English cases are invariably cited both by Scottish text writers and by counsel before Scottish Courts (*b*).

Principle of natural liberty.

Contracts of this kind have, however, been long familiar to Scotch law, their validity being discussed in relation to what is called "natural liberty." Thus, in 1728, we find an agreement by masters and crews of fishing boats to serve the tacksmen of such boats as belonged to the village of Johnshaven for nineteen years, and not to remove from one boat to another, or from the said village, reduced by the Court as being too great a restraint upon natural liberty (*c*). A little later, in 1735, we have the case of *Stalker* v. *Carmichael* (*d*), in which the Courts upheld a stipulation in partial restraint of trade. In this case the parties had entered into a copartnery of bookselling within the city of Glasgow, to continue for three years; and because the place was judged too narrow for two booksellers at a time, it was stipulated "that after the expiry of three years, either of them refusing to enter into

(*a*) *Bird* v. *Lake*, 1 H. & M. 338; *Bird* v. *Turner*, *ibid.*

(*b*) See Bell's Commentaries, 7th ed. p. 322; and cases *infra*.

(*c*) *Allan* v. *Skene*, Morrison's Dict. of Decisions, 9454.

(*d*) Morrison, 9455.

a new contract upon the former terms should be debarred from any selling within the city of Glasgow." In a suit for the reduction of the contract, the Lords found that the debarring clause in the contract was a lawful paction, and not contrary to the liberty of the subject.

Coming to later times, we find the Court, in 1863, called upon to construe and decide upon the validity of a stipulation in a contract between a corn factor and his clerk, in these terms—"Neither while in my service, nor after leaving it, are you to accept any other situation, nor engage, directly or indirectly, in any business on your own account in Leith or neighbourhood" (*e*). In that case Lord Inglis, then Lord Justice Clerk, stated the law as follows (*f*): "There can be no doubt that, according to the law of Scotland, a paction against the liberty of trade is illegal; and that agreements, by which a man binds himself that he will not carry on trade of any kind, though limited in space, or a particular trade if unlimited in space, are both equally bad in law. But then it is equally settled in the law of Scotland that there may be a good agreement that a man shall not carry on a particular trade in a particular place. That was settled so long ago as 1735, in the case of *Stalker* v. *Carmichael*" (*g*). Applying these principles to this case, the Court considered it to be a question of construction, and construing the stipulation in view of the fact that the master intended only to protect his business, held that it meant that the party so restrained was not to accept a situation, nor engage in business in Leith, as a corn-factor in any branch of that trade, and granted an interdict accordingly.

Application of principle.

(*e*) *Watson* v. *Neuffert*, 1 Macph. 1110.

(*f*) *Ibid.* p. 1112.

(*g*) See *supra*.

Breach of agreement.

As regards what amounts to a breach, principles similar to those in England were applied to the decision of the case of *McIntyre* v. *McRaild* (*h*). A surgeon's assistant had agreed not to accept a practice in a certain district to the exclusion and disadvantage of his employer. The assistant accepted the practice, and set up as a defence that he had not committed a breach, inasmuch as his late employer would not have obtained the appointment. The Court, however, granted an interdict restraining him.

Cases in the United States.

In the United States the principle has been adopted, that covenants in general restraint of trade are void. This was clearly decided in *Alger* v. *Thacker* (*i*), in 1837, when the condition in a bond that the obligor should never carry on or be concerned in the business of founding iron was considered void as having no limit in space. Agreements limited in space are valid if the limit is reasonable (*k*). In *Keeler* v. *Taylor* (*l*), Woodward, C. J., sums up the law in the United States, thus: "The general rule is that all restraints of trade, if nothing more appear, are bad. But to this general rule are some exceptions, as, if the restraint be only partial in respect of time or place, and there be a good consideration given to the party restrained. But such partial restraints only make the bond good *at law;* equity is loth, even then, to enforce them, and will not do so if the terms be at all hard or even complex."

In *Morse* v. *Morse* (*m*) a covenant by a patentee,

(*h*) 4 Macph. 571.

(*i*) 19 Pick. 51.

(*k*) See 2 Parsons on Contracts, pp. 747—753, and cases there cited. See Story's Equity Jurisprudence, § 292; Benjamin on Sales, 3rd ed. p. 540; Story on Contracts, §§ 550—555.

(*l*) 53 Penn. 467.

(*m*) 103 Mass. 73, and cases cited. And see *Taylor* v. *Blanchard*, 13 Allen, 370, and cases there cited.

upon the sale of his business and of the patent, to do no act to injure the same, and "at no time to aid, assist, or encourage in any manner any competition against the same," was held not to be necessarily void as in restraint of trade; and partiality in space was not considered necessary.

# INDEX.

LONDON:
PRINTED BY C. F. ROWORTH, GREAT NEW STREET, FETTER LANE, E.C.

# A CATALOGUE
OF
# LAW WORKS
PUBLISHED BY
# STEVENS AND SONS,
## LIMITED,
119 & 120, CHANCERY LANE, LONDON,
(*And at* 14, *Bell Yard, Lincoln's Inn*).

Telegraphic Address—"RHODRONS, London."

**A Catalogue of Modern Law Works,** *together with a complete Chronological List of all the English, Irish, and Scotch Reports, an Alphabetical Table of Abbreviations used in reference to Law Reports and Text Books, and an Index of Subjects corrected to end of* 1890. *Demy* 8*vo.* (114 *pages*), *limp binding. Post free,* 6*d.*

**Acts of Parliament.**—*Public and Local Acts from an early date may be had of the Publishers of this Catalogue, who have also on sale the largest collection of Private Acts, relating to Estates, Enclosures, Railways, Roads, &c., &c.*

ACCOUNT STAMP DUTY.—Gosset.—*Vide* "Stamp Duty."

ACTION AT LAW.—Foulkes' Elementary View of the Proceedings in an Action in the Supreme Court, with a Chapter on Matters and Arbitrations.—(Founded on "SMITH'S ACTION AT LAW.") By W. D. I. FOULKES, Esq., Barrister-at-Law. Third Edition. Demy 12mo. 1884. 7*s.* 6*d.*

ADMIRALTY.—Roscoe's Admiralty Practice.—A Treatise on the Jurisdiction and Practice of the Admiralty Division of the High Court of Justice, and on Appeals therefrom, with a chapter on the Admiralty Jurisdiction of the Inferior and the Vice-Admiralty Courts. With an Appendix containing Statutes, Rules as to Fees and Costs, Forms, Precedents of Pleadings and Bills of Costs. By E. S. ROSCOE, Esq., Barrister-at-Law. Second Edition. Demy 8vo. 1882. 1*l.* 4*s.*

ADVOCACY.—Harris' Hints on Advocacy.—Conduct of Cases Civil and Criminal. Classes of Witnesses and Suggestions for Cross-examining them, &c., &c. By RICHARD HARRIS, one of her Majesty's Counsel. Ninth Edition (with a new chapter on "Tactics"). Royal 12mo. 1889. 7*s.* 6*d.*

"The work is not merely instructive, it is exceedingly interesting and amusing. . . . . We know of no better mode at present of learning some at least of an advocate's duties than in studying this book and the methods of the most distinguished advocates of the day."—*The Jurist.*

"Full of good sense and just observation. A very complete Manual of the Advocate's art in Trial by Jury."—*Solicitors' Journal.*

"A book at once entertaining and really instructive. . . . Deserves to be carefully read by the young barrister whose career is yet before him."—*Law Magazine.*

"We welcome it as an old friend, and strongly recommend it to the would-be advocate."—*Law Student's Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

AGRICULTURAL LAW.—Beaumont's Treatise on Agricultural Holdings and the Law of Distress as regulated by the Agricultural Holdings (England) Act, 1883, with Appendix containing Full Text of the Act, and Precedents of Notices and Awards. By JOSEPH BEAUMONT, Esq., Solicitor. Royal 12mo. 1883. 10*s.* 6*d.*

Cooke's Treatise on the Law and Practice of Agricultural Tenancies.—New edition, in great part re-written with especial reference to Unexhausted Improvements, with Modern Forms and Precedents By G. PRIOR GOLDNEY and W. RUSSELL GRIFFITHS, Esqs., Barristers-at-Law. Demy 8vo. 1882. 1*l.* 1*s.*

Dixon.—*Vide* "Farm."

Griffiths' Agricultural Holdings (England) Act, 1883, containing an Introduction; a Summary of the Act, with Notes; the complete text of the Act, with Forms, and a specimen of an Award under the Act. By W. RUSSELL GRIFFITHS, Esq., of the Midland Circuit. Demy 8vo. 1883. 5*s.*

Spencer's Agricultural Holdings (England) Act, 1883, with Explanatory Notes and Forms; together with the Ground Game Act, 1880. Forming a Supplement to "Dixon's Law of the Farm." By AUBREY J. SPENCER, B.A., Barrister-at-Law. Demy 8vo. 1883. 6*s.*

ALLOTMENTS.—Hall's Allotments Acts, 1887, with the Regulations issued by the Local Government Board, and Introductory Chapters, Notes, and Forms. By T. HALL HALL, Barrister-at-Law. Author of "The Law of Allotments." Royal 12mo. 1888. 7*s.* 6*d.*

ANNUAL DIGEST.—Mews'.—*Vide* "Digest."

ANNUAL PRACTICE (THE).—The Annual Practice for 1890-91. Edited by THOMAS SNOW, Barrister-at-Law; CHARLES BURNEY, a Chief Clerk of the Hon. Mr. Justice Chitty, Editor of "Daniell's Chancery Forms"; and F. A. STRINGER, of the Central Office. 2 vols. Demy 8vo.

"A book which every practising English lawyer must have."—*Law Quarterly Review.*

"Every member of the bar, in practice, and every London solicitor, at all events, finds the last edition of the Annual Practice a necessity."—*Solicitors' Journal.*

ANNUAL STATUTES.—Lely.—*Vide* "Statutes."

ARBITRATION.—Russell's Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards; with an Appendix of Forms, and of the Statutes relating to Arbitration. By FRANCIS RUSSELL, Esq., M.A., Barrister-at-Law. Sixth Edition. By the Author and HERBERT RUSSELL, Esq., Barrister-at-Law. Royal 8vo. 1882. 36*s.*

"This edition may be commended to the profession as comprehensive, accurate and practical."—*Solicitors' Journal.*

ARCHITECTS.—Macassey and Strahan.—*Vide* "Civil Engineers."

ARTICLED CLERKS.—Rubinstein and Ward's Articled Clerks' Handbook.—Being a Concise and Practical Guide to all the Steps Necessary for Entering into Articles of Clerkship, passing the Preliminary, Intermediate, Final, and Honours Examinations, obtaining Admission and Certificate to Practise, with Notes of Cases Third Edit. By J. S. RUBINSTEIN and S. WARD, Solicitors. 12mo. 1881. 4*s.*

"No articled clerk should be without it."—*Law Times.*

ASSETS, ADMINISTRATION OF.—Eddis' Principles of the Administration of Assets in Payment of Debts.—By ARTHUR SHELLY EDDIS, one of Her Majesty's Counsel. Demy 8vo. 1880. 6*s.*

AVERAGE.—Hopkins' Hand-Book of Average, to which is added a Chapter on Arbitration.—Fourth Edition. By MANLEY HOPKINS, Esq. Demy 8vo. 1884. 1*l.* 1*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

AVERAGE—*continued.*

Lowndes' Law of General Average.—English and Foreign. Fourth Edition. By RICHARD LOWNDES, Average Adjuster. Author of "The Law of Marine Insurance," &c. Royal 8vo. 1888. 1*l.* 10*s.*

"The book is one which shows a mastery of its subject."—*Solicitors' Journal.*

"The author has worked in with that skill which has given him his reputation the recent cases which are by no means easy to deal with, and present difficulties to the lawyer."—*Law Times.*

"It may be confidently asserted that, whether for the purposes of the adjuster or the lawyer, Mr. Lowndes' work presents (in a style which is a model of clear and graceful English) the most complete store of materials relating to the subject in every particular, as well as an excellent exposition of its principles."—*Law Quarterly Review.*

BALLOT.—Fitzgerald's Ballot Act.—With an Introduction. Forming a Guide to the Procedure at Parliamentary and Municipal Elections. Second Edition. By GERALD A. R. FITZGERALD, Esq., Barrister-at-Law Fcap. 8vo. 1876. 5*s.* 6*d.*

BANKING.—Walker's Treatise on Banking Law.—Second Edition. By J. D. WALKER, Esq., Barrister-at-Law. Demy 8vo. 1885. 15*s.*

BANKRUPTCY.—Chitty's Index, Vol. I.—*Vide* "Digests."

Lawrance's Precedents of Deeds of Arrangement between Debtors and their Creditors; including Forms of Resolutions for Compositions and Schemes of Arrangement under the Bankruptcy Act, 1883. Third Edition. With Introductory Chapters; also the Deeds of Arrangement Act, 1887, with Notes. By G. W. LAWRANCE, Esq., Barrister-at-Law. 8vo. 1888. 7*s.* 6*d.*

"The new edition of Mr. Lawrance's work is as concise, practical, and reliable as its predecessors."—*Law Times*, Feb. 11, 1888.

Williams' Law and Practice in Bankruptcy.—Comprising the Bankruptcy Acts, 1883 to 1890, the Bankruptcy Rules, 1886, 1890, the Debtors Acts, 1869, 1878, the Bankruptcy (Discharge and Closure) Act, 1887, and the Deeds of Arrangement Act, 1887. By the Hon. Sir ROLAND VAUGHAN WILLIAMS, one of the Justices of Her Majesty's High Court of Justice. Fifth Edition. By EDWARD WM. HANSELL, Esq., Barrister-at-Law. Roy. 8vo. 1891. 25*s.*

"Almost indispensable to the general practitioner."—*Law Gazette*, April 23, 1891.

"Mr. Hansell has done his editorial work with evident care and industry."—*Law Times*, May 2, 1891.

BILLS OF EXCHANGE.—Chalmers' Digest of the Law of Bills of Exchange, Promissory Notes, Cheques and Negotiable Securities. Fourth Edition. By His Honour Judge CHALMERS, Draughtsman of the Bills of Exchange Act, 1882, &c. Demy 8vo. (*In the press.*)

"This excellent work is unique. As a statement and explanation of the law, it will be found singularly useful."—*Solicitors' Journal.*

BILLS OF SALE.—Fithian's Bills of Sale Acts, 1878 and 1882. With an Introduction and Explanatory Notes, together with an Appendix of Precedents, Rules of Court, Forms, and Statutes. Second Edition. By EDWARD WILLIAM FITHIAN, Esq., Barrister-at-Law. Royal 12mo. 1884. 6*s.*

BOOK-KEEPING.—Matthew Hale's System of Book-keeping for Solicitors, containing a List of all Books necessary, with a comprehensive description of their objects and uses for the purpose of Drawing Bills of Costs and the rendering of Cash Accounts to clients; also showing how to ascertain Profits derived from the business; with an Appendix. Demy 8vo. 1884. 5*s.* 6*d.*

"We think this is by far the most sensible, useful, practical little work on solicitors' book-keeping that we have seen."—*Law Students' Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

BRITISH GUIANA.—Pound's Supplement to "The Magisterial Law of British Guiana" published in 1877. With a combined Index to both works. By ALFRED JOHN POUND, Barrister-at-Law, and formerly a Stipendiary Magistrate in and for the Colony of British Guiana. Demy 8vo. 1888. *Net*, 2*l.* 10*s.*

BUILDING SOCIETIES.—Wurtzburg on Building Societies.—The Acts relating to Building Societies, comprising the Act of 1836 and the Building Societies Acts, 1874, 1875, 1877, and 1884, and the Treasury Regulations, 1884; with an Introduction, copious Notes, and Precedents of Rules and Assurances. By E. A. WURTZBURG, Esq., Barrister-at-Law. Royal 12mo. 1886. 7*s.* 6*d.*

"The work presents in brief, clear, and convenient form the whole law relating to Building Societies."

CANALS.—Webster's Law Relating to Canals: Comprising a Treatise on Navigable Rivers and Canals, together with the Procedure and Practice in Private Bill Legislation; with a coloured Map of the existing Canals and Navigations in England and Wales. By ROBERT G. WEBSTER, M.P., Barrister-at-Law. Demy 8vo. 1885. 1*l.* 1*s.*

Street.—*Vide* "Company Law."

CARRIERS.—Carver's Treatise on the Law relating to the Carriage of Goods by Sea.—Second Edition. By THOMAS GILBERT CARVER, Esq., Barrister-at-Law. Royal 8vo. 1891. 1*l.* 12*s.*

"A careful and accurate treatise."—*Law Quarterly Review.*

Macnamara's Law of Carriers.—A Digest of the Law of Carriers of Goods and Passengers by Land and Internal Navigation, including the Railway and Canal Traffic Act, 1888.—By WALTER HENRY MACNAMARA, of the Inner Temple, Barrister-at-Law, Registrar to the Railway Commission. Royal 8vo. 1888. 1*l.* 8*s.*

"Mr. Macnamara seems to have done his work soundly and industriously, and to have produced a book which will be useful to practitioners in a large class of cases."—*Saturday Review*, June 15, 1889.

"A complete *epitome* of the law relating to carriers of every class."—*Railway Press.*

"We cordially approve of the general plan and execution of this work. . . . . The general arrangement of the book is good."—*Solicitors' Journal*, March 9, 1889.

"Should find a place in the library of all railway men. The work is written in a terse, clear style, and is well arranged for speedy reference."—*Railway News*, Dec. 8, 1888.

CHAMBER PRACTICE.—Archibald's Practice at Judges' Chambers and in the District Registries in the Queen's Bench Division, High Court of Justice; with Forms of Summonses and Orders. Second Edition. By W. F. A. ARCHIBALD, Esq., Barrister-at-Law, and P. E. VIZARD, of the Summons and Order Department, Royal Courts of Justice. Royal 12mo. 1886. 15*s.*

CHANCERY, *and Vide* "Equity."

Daniell's Chancery Practice.—The Practice of the Chancery Division of the High Court of Justice and on appeal therefrom. Sixth Edit. By L. FIELD, E. C. DUNN, and T. RIDTON, assisted by W. H. UPJOHN, Barristers-at-Law. 2 vols. in 3 parts. Demy 8vo. 1882-84. 6*l.* 6*s.*

Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom. Fourth Edition. With Summaries of the Rules of the Supreme Court, Practical Notes and References to the Sixth Edition of "Daniell's Chancery Practice." By CHARLES BURNEY, B.A. Oxon., a Chief Clerk of the Hon. Mr. Justice Chitty. Royal 8vo. 1885. 2*l.* 10*s.*

Morgan's Chancery Acts and Orders.—The Statutes, Rules of Court and General Orders relating to the Practice and Jurisdiction of the Chancery Division of the High Court of Justice and the Court of Appeal. With Copious Notes. Sixth Edition. By the Right Hon. GEORGE OSBORNE MORGAN, one of Her Majesty's Counsel, and E. A. WURTZBURG, Barrister-at-Law. Royal 8vo. 1885. 1*l.* 10*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CHANCERY—*continued.*

Peel's Chancery Actions.—A Concise Treatise on the Practice and Procedure in Chancery Actions under the Rules of the Supreme Court, 1883. Third Edition. By SYDNEY PEEL, Esq., Barrister-at-Law. Demy 8vo. 1883. 8*s.* 6*d.*

CHARITABLE TRUSTS.—Mitcheson's Charitable Trusts.—The Jurisdiction of the Charity Commission; being the Acts conferring such jurisdiction, 1853—1883, with Introductory Essays and Notes on the Sections. By RICHARD EDMUND MITCHESON, Esq., Barrister-at-Law. Demy 8vo. 1887. 18*s.*

"A very neat and serviceable hand-book of the Law of the Charity Commissioners."—*Law Journal.*

CHARTER PARTIES.—Carver.—*Vide* "Carriers." Wood.—*Vide* "Mercantile Law."

CIVIL ENGINEERS.—Macassey and Strahan's Law relating to Civil Engineers, Architects and Contractors.—Primarily intended for their own use. By L. LIVINGSTON MACASSEY and J. A. STRAHAN, Esqrs., Barristers-at-Law. Demy 8vo. 1890. 10*s.* 6*d.*

COAL MINES.—Chisholm's Manual of the Coal Mines Regulation ACT, 1887.—With Introduction, Explanatory and Practical Notes and References to Decisions in England and Scotland, Appendix of Authorized Forms, Particulars as to Examinations for Certificates, &c., and a copious Index. By JOHN C. CHISHOLM, Secretary to the Midland and East Lothian Coalmasters' Association. Demy 8vo. 1888. 7*s.* 6*d.*

COLLISIONS.—Marsden's Treatise on the Law of Collisions at Sea.—With an Appendix containing Extracts from the Merchant Shipping Acts, the International Regulations for preventing Collisions at Sea; and local Rules for the same purpose in force in the Thames, the Mersey, and elsewhere. By REGINALD G. MARSDEN, Esq., Barrister-at-Law. Third Edition. By the Autbor and the Hon. J. W. MANSFIELD, Barrister-at-Law. Demy 8vo. 1891. 1*l.* 5*s.*

COMMERCIAL LAW.—The French Code of Commerce and most usual Commercial Laws.—With a Theoretical and Practical Commentary, and a Compendium of the Judicial Organization and of the Course of Procedure before the Tribunals of Commerce; together with the text of the law; the most recent decisions, and a glossary of French judicial terms. By L. GOIRAND, Licencié en droit. Demy 8vo. 1880. 2*l.* 2*s.*

COMMON LAW.—Ball's Short Digest of the Common Law; being the Principles of Torts and Contracts. Chiefly founded upon the Works of Addison, with Illustrative Cases, for the use of Students. By W. EDMUND BALL, LL.B., Barrister-at-Law. Demy 8vo. 1880. 16*s.*

Chitty's Archbold's Practice of the Queen's Bench Division of the High Court of Justice and on Appeal therefrom to the Court of Appeal and House of Lords in Civil Proceedings. Fourteenth Edition. By THOMAS WILLES CHITTY, assisted by J. ST. L. LESLIE, Barristers-at-Law. 2 vols. Demy 8vo. 1885. 3*l.* 13*s.* 6*d.*

Napier's Concise Practice of the Queen's Bench and Chancery Divisions and of the Court of Appeal, with an Appendix of Questions on the Practice, and intended for the use of Students. By T. BATEMAN NAPIER, Esq., Barrister-at-Law. Demy 8vo. 1884. 10*s.*

Shirley.—*Vide* "Leading Cases."

Smith's Manual of Common Law.—For Practitioners and Students. Comprising the Fundamental Principles, with useful Practical Rules and Decisions. By JOSIAH W. SMITH, B.C.L., Q.C. Tenth Edition. By J. TRUSTRAM, LL.M., Esq., Barrister-at-Law. 12mo. 1887. 14*s.*

Chitty's Forms.—*Vide* "Forms."

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

COMMON LAW—*continued.*

Fisher's Digest of Reported Decisions in all the Courts, with a Selection from the Irish; and references to the Statutes, Rules and Orders of Courts from 1756 to 1883. Compiled and arranged by JOHN MEWS, assisted by C. M. CHAPMAN, HARRY H. W. SPARHAM and A. H. TODD, Barristers-at-Law. In 7 vols. Royal 8vo. 1884. 12*l.* 12*s.*

Mews' Consolidated Digest of all the Reports in all the Courts, for the years 1884–88, inclusive. By JOHN MEWS, Barrister-at-Law. Royal 8vo. 1889. 1*l.* 11*s.* 6*d.*

The Annual Digest for 1889 and 1890. By JOHN MEWS. *Each*, 15*s.*

*** The above works bring Fisher's Common Law and Chitty's Equity Digests down to end of 1890.

COMMONS AND INCLOSURES.—Chambers' Digest of the Law relating to Commons and Open Spaces, including Public Parks and Recreation Grounds. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. Imperial 8vo. 1877. 6*s.* 6*d.*

COMPANY LAW.—Hamilton's Manual of Company Law: For Directors and Promoters. Being a Treatise upon the nature of Trading Corporations, the Rights, Duties, and Liabilities of Directors and Promoters (including their Liabilities under the Directors Liability Act, 1890), the Appointment and Removal of Directors, the Powers of Directors, and the Law of Ultra Vires. By WILLIAM FREDERICK HAMILTON, LL.D. (Lond.), assisted by KENNARD GOLBORNE METCALFE, M.A., Esqrs., Barristers-at-Law. Demy 8vo. 1891. 12*s.* 6*d.*

"The work is executed throughout with great care and accuracy . . . . may be safely recommended as a most useful manual of the law with which it deals."—*Law Gazette.*

Palmer's Private Companies, their Formation and Advantages; being a Concise Popular Statement of the Mode of Converting a Business into a Private Company, and the Benefit of so doing. With Notes on "Single Ship Companies." Eighth Edition. By F. B. PALMER, Esq., Barrister-at-Law. 12mo. 1890. *Net* 2*s.*

Palmer.—*Vide* "Conveyancing" and "Winding-up."

Palmer's Shareholders' and Directors' Legal Companion.—A Manual of Every-day Law and Practice for Promoters, Shareholders, Directors, Secretaries, Creditors and Solicitors of Companies under the Companies Acts, 1862 to 1890, with an Appendix on the Conversion of Business Concerns into Private Companies, and on the Directors Liability Act, 1890. 11th edit. By F. B. PALMER, Esq., Barrister-at-Law. 12mo. 1890. *Net*, 2*s.* 6*d.*

Street's Law relating to Public Statutory Undertakings: comprising Railway Companies, Water, Gas, and Canal Companies, Harbours, Docks, &c., with special reference to Modern Decisions. By J. BAMFIELD STREET, Esq., Barrister-at-Law. Demy 8vo. 1890. 10*s.* 6*d.*

"This book contains in a small compass a large amount of useful information: its style is clear and its arrangement good."—*Solicitors' Journal*, November 1, 1890.

Thring.—*Vide* "Joint Stocks."

COMPENSATION.—Cripps' Treatise on the Principles of the Law of Compensation. Second Edition. By C. A. CRIPPS, Esq., Barrister-at-Law. Demy 8vo. 1884. 16*s.*

COMPOSITION DEEDS.—Lawrance.—*Vide* "Bankruptcy."

CONTINGENT REMAINDERS.—An Epitome of Fearne on Contingent Remainders and Executory Devises. Intended for the Use of Students. By W. M. C. Post 8vo. 1878. 6*s.* 6*d.*

CONTRACTS.—Addison on Contracts. Being a Treatise on the Law of Contracts. Eighth Edition. By HORACE SMITH, Esq., Barrister-at-Law. Royal 8vo. 1883. 2*l.* 10*s.*

"To the present editor must be given all praise which untiring industry and intelligent research can command."—*Law Times.*

"A satisfactory guide to the vast storehouse of decisions on contract law." *Sol. Jour.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CONTRACTS—*continued.*

Fry.—*Vide* "Specific Performance."

Leake on Contracts.—An Elementary Digest of the Law of Contracts. By STEPHEN MARTIN LEAKE, Barrister-at-Law. Demy 8vo. 1878. 1*l.* 18*s.*

Pollock's Principles of Contract.—Being a Treatise on the General Principles relating to the Validity of Agreements in the Law of England. Fifth Edition, with a new Chapter. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law, Professor of Common Law in the Inns of Court, &c. Demy 8vo. 1889. 1*l.* 8*s.*

"The reputation of the book stands so high that it is only necessary to announce the publication of the fifth edition, adding that the work has been thoroughly revised."—*Law Journal*, Dec. 14, 1889.

Smith's Law of Contracts.—Eighth Edition. By V. T. THOMPSON, Esq., Barrister-at-Law. Demy 8vo. 1885. 1*l.* 1*s.*

CONVEYANCING.—Dart.—*Vide* "Vendors and Purchasers."

Greenwood's Manual of Conveyancing.—A Manual of the Practice of Conveyancing, showing the present Practice relating to the daily routine of Conveyancing in Solicitors' Offices. To which are added Concise Common Forms and Precedents in Conveyancing. Eighth Edition. Edited by HARRY GREENWOOD, M.A., LL.D., Esq., Barrister-at-Law. Demy 8vo. 1891. 16*s.*

"That this work has reached its eighth edition is sufficient evidence of the fact that it is one of those books which no lawyer's bookshelf should be without. Recent Acts have necessitated several changes which have been carried out, and cases are cited up to date. The book is a complete guide to Conveyancing, and, though the author says that it is intended for students and articled and other clerks, we can fearlessly assert that those who would perhaps consider it an insult to be mistaken for students will find in it very much that is useful. The Table of Precedents could not, we imagine, be made more complete than it is. Where and how the author obtained his information is a perfect puzzle to us, and no conceivable state of affairs seems to have been left unprovided for."—*Law Gazette*, December 4, 1890.

"We should like to see it placed by his principal in the hands of every articled clerk. One of the most useful practical works we have ever seen."—*Law Students' Journal.*

Morris's Patents Conveyancing.—Being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions. Arranged as follows:—Common Forms, Agreements, Assignments, Mortgages, Special Clauses, Licences, Miscellaneous; Statutes, Rules, &c. With Dissertations and Copious Notes on the Law and Practice. By ROBERT MORRIS, M.A., Barrister-at-Law. Royal 8vo. 1887. 1*l.* 5*s.*

"Contains valuable dissertations, and useful notes on the subject with which it deals. . . . . We think it would be difficult to suggest a form which is not to be met with or capable of being prepared from the book before us. To those whose business lies in the direction of letters patent and inventions it will be found of great service. . . . . Mr. Morris' forms seem to us to be well selected, well arranged, and thoroughly practical."—*Law Times.*

Palmer's Company Precedents.—For use in relation to Companies subject to the Companies Acts, 1862 to 1890. Arranged as follows:—Promoters, Prospectus, Agreements, Memoranda and Articles of Association, Resolutions, Notices, Certificates, Private Companies, Power of Attorney, Debentures and Debenture Stock, Petitions, Writs, Pleadings, Judgments and Orders, Reconstruction, Amalgamation, Arrangements, Special Acts, Provisional Orders, Winding-up. With Copious Notes and an Appendix containing the Acts and Rules. Fifth Edition. By FRANCIS BEAUFORT PALMER, assisted by CHARLES MACNAGHTEN, Esqrs., Barristers-at-Law. Royal 8vo. 1891. 1*l.* 16*s.*

"No company lawyer can afford to be without it."—*Law Journal*, April 25, 1891.

"As regards company drafting—as we remarked on a former occasion—it is unrivalled."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CONVEYANCING—*continued.*

Prideaux's Precedents in Conveyancing—With Dissertations on its Law and Practice. Fourteenth Edition. By FREDERICK PRIDEAUX, late Professor of the Law of Real and Personal Property to the Inns of Court, and JOHN WHITCOMBE, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1889. 3*l.* 10*s.*

"The most useful work out on Conveyancing."—*Law Journal.*

"This work is accurate, concise, clear, and comprehensive in scope, and we know of no treatise upon conveyancing which is so generally useful to the practitioner."—*Law Times.*

Turner's Duties of Solicitor to Client as to Partnership Agreements, Leases, Settlements, and Wills.—By EDWARD F. TURNER, Solicitor, Lecturer on Real Property and Conveyancing, Author of "The Duties of Solicitor to Client as to Sales, Purchases, and Mortgages of Land." (Published by permission of the Council of the Incorporated Law Society.) Demy 8vo. 1884. 10*s.* 6*d.*

"The work has our full approval, and will, we think, be found a valuable addition to the student's library."—*Law Students' Journal.*

CONVICTIONS.—Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts, 1848 and 1879; including Proceedings preliminary and subsequent to Convictions, and the responsibility of convicting Magistrates and their Officers, with Forms. Sixth Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1879. 1*l.* 4*s.*

COPYRIGHT.—Slater's Law relating to Copyright and Trade Marks, treated more particularly with Reference to Infringement; forming a Digest of the more important English and American decisions, together with the Practice of the English Courts, &c. By JOHN HERBERT SLATER, Esq., Barrister-at-Law. 8vo. 1884. 18*s.*

CORONERS.—Jervis on the Office and Duties of Coroners.—The Coroners Act, 1887. With Forms and Precedents. By R. E. MELSHEIMER, Esq., Barrister-at-Law. Being the Fifth Edition of "Jervis on Coroners." Post 8vo. 1888. 10*s.* 6*d.*

"The present edition will hold the place of that occupied by its predecessors, and will continue to be the standard work on the subject."—*Law Times.*

COSTS.—Morgan and Wurtzburg's Treatise on the Law of Costs in the Chancery Division.—Second Edition. With Forms and Precedents. By the Rt. Hon. GEORGE OSBORNE MORGAN, Q.C., and E. A. WURTZBURG, Esq., Barrister-at-Law. Demy 8vo. 1882. 1*l.* 10*s.*

Summerhays and Toogood's Precedents of Bills of Costs in the Chancery, Queen's Bench, Probate, Divorce and Admiralty Divisions of the High Court of Justice; in Conveyancing; the Crown Office; Bankruptcy; Lunacy; Arbitration under the Lands Clauses Consolidation Act; the Mayor's Court, London; the County Courts; the Privy Council; and on Passing Residuary and Succession Accounts; with Scales of Allowances and Court Fees; Rules of Court relating to Costs; Forms of Affidavits of Increase, and of Objections to Taxation. By WM. FRANK SUMMERHAYS, and THORNTON TOOGOOD, Solicitors. Sixth Edition. By THORNTON TOOGOOD, Solicitor. Royal 8vo. 1889. 1*l.* 8*s.*

Summerhays and Toogood's Precedents of Bills of Costs in the County Courts. Royal 8vo. 1889. 5*s.*

Scott's Costs in the High Court of Justice and other Courts. Fourth Edition. By JOHN SCOTT, of the Inner Temple, Esq., Barrister-at-Law. Demy 8vo. 1880. 1*l* 6*s.*

Webster's Parliamentary Costs.—Private Bills, Election Petitions, Appeals, House of Lords. Fourth Edition. By C. CAVANAGH, Esq., Barrister-at-Law. Post 8vo. 1881. 20*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

COUNTY COUNCILS.—Bazalgette and Humphreys, Chambers. —*Vide* "Local and Municipal Government."

COUNTY COURTS.—Pitt-Lewis' County Court Practice.—A Complete Practice of the County Courts, including that in Admiralty and Bankruptcy, embodying the County Courts Act, 1888, and other existing Acts, Rules, Forms and Costs, with Full Alphabetical Index to Official Forms, Additional Forms and General Index. Fourth Edition. With Supplementary Volume containing the NEW WINDING-UP PRACTICE. By G. PITT-LEWIS, Esq., Q.C., M.P., Recorder of Poole. 3 vols. Demy 8vo. 1890-91. 2*l.* 10*s.*

*** *The Supplement sold separately.* 7*s.* 6*d.*

"A complete practice of the County Courts."—*Law Journal*, March 22, 1890.
"The present edition of this work fully maintains its reputation as the standard County Court Practice."—*Solicitors' Journal*, March 29, 1890.

Pitt-Lewis' County Courts Act, 1888.—With Introduction, Tabular Indices to consolidated Legislation, Notes, and an Index to the Act. Second Edition. By GEORGE PITT-LEWIS, Esq., Q.C., Author of "A Complete Practice of the County Courts." Imperial 8vo. 1889. 5*s.*

*** The above, with THE COUNTY COURT RULES, 1889. Official copy. *Limp binding.* 10*s.* 6*d.*

Summerhays and Toogood.—*Vide* "Costs."

COVENANTS.—Hamilton's Law of Covenants.—A Concise Treatise on the Law of Covenants. By G. BALDWIN HAMILTON, of the Inner Temple, Esq., Barrister-at-Law. Demy 8vo. 1888. 7*s.* 6*d.*

"A handy volume written with clearness, intelligence, and accuracy, and will be useful to the profession."—*Law Times.*

CRIMINAL LAW.—Archbold's Pleading and Evidence in Criminal Cases.—With the Statutes, Precedents of Indictments, &c., and the Evidence necessary to support them. Twentieth Edition. By WILLIAM BRUCE, Esq., Stipendiary Magistrate for the Borough of Leeds. Royal 12mo. 1886. 1*l.* 11*s.* 6*d.*

Mews' Digest of Cases relating to Criminal Law from 1756 to 1883, inclusive.—By JOHN MEWS, assisted by C. M. CHAPMAN, HARRY H. W. SPARHAM, and A. H. TODD, Barristers-at-Law. Royal 8vo. 1884. 1*l.* 1*s.*

Phillips' Comparative Criminal Jurisprudence.—Vol. I. Penal Law. Vol. II. Criminal Procedure. By H. A. D. PHILLIPS, Bengal Civil Service. 2 vols. Demy 8vo. 1889. 1*l.* 4*s.*

Roscoe's Digest of the Law of Evidence in Criminal Cases.—Eleventh Edition. By HORACE SMITH and GILBERT GEORGE KENNEDY, Esqrs., Metropolitan Magistrates. Demy 8vo. 1890. 1*l.* 11*s.* 6*d.*

"To the criminal lawyer it is his guide, philosopher and friend. What Roscoe says most judges will accept without question. . . . Every addition has been made necessary to make the digest efficient, accurate, and complete."—*Law Times.*

Russell's Treatise on Crimes and Misdemeanors.—Fifth Edition. By SAMUEL PRENTICE, Esq., one of Her Majesty's Counsel, 3 vols. Royal 8vo. 1877. 5*l.* 15*s.* 6*d.*

"What better Digest of Criminal Law could we possibly hope for than 'Russell on Crimes'?"—*Sir James Fitzjames Stephen's Speech on Codification.*

Shirley's Sketch of the Criminal Law.—By W. S. SHIRLEY, Esq., Barrister-at-Law. Second Edition. By CHARLES STEPHEN HUNTER, Esq., Barrister-at-Law. Demy 8vo. 1889. 7*s.* 6*d.*

As a primary introduction to Criminal Law, it will be found very acceptable to students."—*Law Students' Journal.*

Shirley.—*Vide* "Leading Cases." Thring.—*Vide* "Navy."

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

**DECISIONS OF SIR GEORGE JESSEL.**—Peter's Analysis and Digest of the Decisions of Sir George Jessel; with Notes, &c. By APSLEY PETRE PETER, Solicitor. Demy 8vo. 1883. 16*s.*

**DIARY.**—Lawyer's Companion (The), Diary, and Law Directory for 1891.—For the use of the Legal Profession, Public Companies, Justices, Merchants, Estate Agents, Auctioneers, &c., &c. Edited by J. TRUSTRAM, LL.M., of Lincoln's Inn, Barrister-at-Law; and contains Tables of Costs in Conveyancing, &c.; Monthly Diary of County, Local Government, and Parish Business; Oaths in Supreme Court; Summary of Legislation of 1890; Alphabetical Index to the Practical Statutes; a Copious Table of Stamp Duties; Legal Time, Interest, Discount, Income, Wages and other Tables; Probate, Legacy and Succession Duties; and a variety of matters of practical utility: together with a complete List of the English Bar, and London and Country Solicitors, with date of admission and appointments. PUBLISHED ANNUALLY. Forty-fifth Issue. 1891. (*Pub. about Nov.* 1.)

Issued in the following forms, octavo size, strongly bound in cloth:—

| | | |
|---|---|---|
| 1. | Two days on a page, plain | 5*s.* 0*d.* |
| 2. | The above, INTERLEAVED for ATTENDANCES | 7 0 |
| 3. | Two days on a page, ruled, with or without money columns | 5 6 |
| 4. | The above, with money columns, INTERLEAVED for ATTENDANCES | 8 0 |
| 5. | Whole page for each day, plain | 7 6 |
| 6. | The above, INTERLEAVED for ATTENDANCES | 9 6 |
| 7. | Whole page for each day, ruled, with or without money columns | 8 6 |
| 8. | The above, INTERLEAVED for ATTENDANCES | 10 6 |
| 9. | Three days on a page, ruled blue lines, without money columns | 5 0 |

*The Diary contains memoranda of Legal Business throughout the Year.*

"Contains all the information which could be looked for in such a work, and gives it in a most convenient form and very completely."—*Solicitors' Journal.*

"The 'Lawyer's Companion and Diary' is a book that ought to be in the possession of every lawyer, and of every man of business."

"The 'Lawyer's Companion' is, indeed, what it is called, for it combines everything required for reference in the lawyer's office."—*Law Times.*

"The practitioner will find in these pages, not only all that he might reasonably expect to find, but a great deal more."—*Law Journal*, December 6, 1890.

"It should be in the hands of all members of both branches of the profession."—*Law Gazette*, November 27, 1890.

"The thousand and one things that one needs constantly to know and yet can never remember, will be found handily arranged for immediate reference."—*Pump Court.*

"This legal Whitaker is a noble work, and no lawyer has any right to want to know anything—except law, which it would not tell him."—*Saturday Review.*

**DICTIONARY.**—The Pocket Law Lexicon.—Explaining Technical Words, Phrases and Maxims of the English, Scotch and Roman Law, to which is added a complete List of Law Reports, with their Abbreviations. Second Edition, Enlarged. By HENRY G. RAWSON, Esq., Barrister-at-Law. Fcap. 8vo. 1884. 6*s.* 6*d.*

"A wonderful little legal Dictionary."—*Indermaur's Law Students' Journal.*

"A very handy, complete, and useful little work."—*Saturday Review.*

Wharton's Law Lexicon.—Forming an Epitome of the Law of England, and containing full Explanations of the Technical Terms and Phrases thereof, both Ancient and Modern; including the various Legal Terms used in Commercial Business. Together with a Translation of the Latin Law Maxims and selected Titles from the Civil, Scotch and Indian Law. Ninth Edition. By J. M. LELY, Esq., Barrister-at-Law. Super-royal 8vo. (*In preparation.*)

"On almost every point both student and practitioner can gather information from this invaluable book, which ought to be in every lawyer's office."—*Gibson's Law Notes.*

"One of the first books which every articled clerk and bar student should procure."—*Law Students' Journal.*

"As it now stands the Lexicon contains all it need contain, and to those who value such a work it is made more valuable still."—*Law Times.*

"Edited with industry, learning, and judgment."—*Saturday Review.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DIGESTS.—Chitty's Index to all the Reported Cases decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy from the earliest period. Fourth Edition. Wholly Revised, Re-classified, and brought down to the End of 1883. By HENRY EDWARD HIRST, Barrister-at-Law. Complete in 9 vols. Roy. 8vo. 1883-89. 12*l.* 12*s.*

*** The volumes sold separately; Vols. I., II., III., V., VI., VII. and VIII. *Each*, 1*l.* 11*s.* 6*d.* Vol. IV., 2*l.* 2*s.* Vol. IX., Names of Cases, 1*l.* 1*s.*

"A work indispensable to every bookcase in Lincoln's Inn."—*Law Quarterly Review*, January, 1890.

"The practitioner can hardly afford to do without such a weapon as Mr. Hirst supplies, because if he does not use it probably his opponent will."—*Law Journal.*

"On the whole the work is thoroughly well done. The laborious care bestowed upon the fourth edition of 'Chitty' deserves all praise."—*Law Quarterly Review.*

"We think that we owe it to Mr. Hirst to say that on each occasion when a volume of his book comes before us we exert some diligence to try and find an omission in it, and we apply tests which are generally successful with ordinary text-writers, but not so with Mr. Hirst. At present we have not been able to find a flaw in his armour. We conclude, therefore, that he is an unusually accurate and diligent compiler."—*Law Times.*

"Mr. Hirst has done his work with conspicuous ability and industry, and it is almost unnecessary to add that the modern cases are digested with the perspicuity and conciseness which have always been features of Chitty's Equity Index."—*Law Journal.*

Dale and Lehmann's Digest of Cases, Overruled, Not Followed, Disapproved, Approved, Distinguished, Commented on and specially considered in the English Courts from the Year 1756 to 1886 inclusive, arranged according to alphabetical order of their subjects; together with Extracts from the Judgments delivered thereon, and a complete Index of the Cases, in which are included all Cases reversed from the year 1856. By CHAS. WM. MITCALFE DALE, and RUDOLF CHAMBERS LEHMANN, assisted by CHAS. H. L. NEISH, and HERBERT H. CHILD, Barristers-at-Law. Royal 8vo. 1887. 2*l.* 10*s.*

(*Forms a Supplement to Chitty's Equity Index and Fisher's Common Law Dig.*)

"One of the best works of reference to be found in any library."—*Law Times.*

"The work has been carefully executed, and is likely to be of much service to the practitioner."—*Solicitors' Journal.*

"So far as we have tested the work, it seems very well done, and the mechanical execution is excellent. As for the utility of such a book as this, it is too obvious to be enlarged upon. One could wish that there had been a 'Dale & Lehmann' some years sooner."—*Law Quarterly Review.*

"The book is divided into two parts, the first consisting of an alphabetical index of the cases contained in the Digest presented in a tabular form, showing at a glance how, where, and by what judges they have been considered. The second portion of the book comprises the Digest itself, and bears marks of the great labour and research bestowed upon it by the compilers."—*Law Journal.*

Fisher's Digest of the Reported Decisions of the Courts of Common Law, Bankruptcy, Probate, Admiralty, and Divorce, together with a Selection from those of the Court of Chancery and Irish Courts from 1756 to 1883 inclusive. Founded on Fisher's Digest. By J. MEWS, assisted by C. M. CHAPMAN, H. H. W. SPARHAM, and A. H. TODD, Barristers-at-Law. 7 vols. Roy. 8vo. 1884. 12*l.* 12*s.*

"To the common lawyer it is, in our opinion, the most useful work he can possess. —*Law Times.*

Mews' Consolidated Digest of all the Reports in all the Courts, for the Years 1884-88 inclusive.—By JOHN MEWS, Barrister-at-Law. Royal 8vo. 1889. 1*l.* 11*s.* 6*d.*

"This work is an indispensable companion to the new edition of Chitty's Digest, which ends with 1883, and also Fisher's Digest ending with the same year. . . . . The work appears to us to be exceedingly well done."—*Solicitors' Journal*, Nov. 2, 1889.

The Annual Digest for 1889 and 1890. By JOHN MEWS. *Each*, 15*s.*

*** The above Works bring Fisher's Common Law and Chitty's Equity Digests down to end of 1890.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DISCOVERY.—Hare's Treatise on the Discovery of Evidence.—Second Edition. By SHERLOCK HARE, Barrister-at-Law. Post 8vo. 1877. 12*s.*

Sichel and Chance's Discovery.—The Law relating to Interrogatories, Production, Inspection of Documents, and Discovery, as well in the Superior as in the Inferior Courts, together with an Appendix of the Acts, Forms and Orders. By WALTER S. SICHEL, and WILLIAM CHANCE, Esqrs., Barristers-at-Law. Demy 8vo. 1883. 12*s.*

DISTRESS.—Oldham and Foster on the Law of Distress.—A Treatise on the Law of Distress, with an Appendix of Forms, Table of Statutes, &c. Second Edition. By ARTHUR OLDHAM and A. LA TROBE FOSTER, Esqrs., Barristers-at-Law. Demy 8vo. 1889. 18*s.*

"This is a useful book, because it embraces the whole range of the remedy by distress, not merely distress for rent, but also for *damage feasant*, tithes, poor and highway rates and taxes, and many other matters."—*Solicitors' Journal.*

DISTRICT REGISTRIES.—Archibald.—*Vide* "Chamber Practice."

DIVORCE.—Browne and Powles' Law and Practice in Divorce and Matrimonial Causes. Fifth Edition. By L. D. POWLES, Esq., Barrister-at-Law. Demy 8vo. 1889. 1*l.* 6*s.*

"The practitioner's standard work on divorce practice."—*Law Quarterly Review.*

"Mr. Powles' edition cites all the necessary information for bringing the book down to date, supplies an excellent index, on which he has spent much pains, and maintains the position which Browne's Divorce Treatise has held for many years."—*Law Journal.*

Winter's Manual of the Law and Practice of Divorce.—By DUNCAN CLERK WINTER, Solicitor. (Reprinted from "The Jurist.") Crown 8vo. 1889. *Net*, 2*s.* 6*d.*

DOGS.—Lupton's Law relating to Dogs.—By FREDERICK LUPTON, Solicitor. Royal 12mo. 1888. 5*s.*

"Within the pages of this work the reader will find every subject connected with the law relating to dogs touched upon, and the information given appears to be both exhaustive and correct."—*Law Times.*

DOMICIL.—Dicey's Le Statut Personnel anglais ou la Loi du Domicile.—Ouvrage traduit et complété d'après les derniers arrêts des Cours de Justice de Londres, et par la comparaison avec le Code Napoléon et les Diverses Législations du Continent. Par EMILE STOCQUART, Avocat à la Cour d'Appel de Bruxelles. 2 Tomes. Demy 8vo. 1887-88. 1*l.* 4*s.*

EASEMENTS.—Goddard's Treatise on the Law of Easements.—By JOHN LEYBOURN GODDARD, Esq., Barrister-at-Law. Fourth Edition. Demy 8vo. 1891. 1*l.* 1*s.*

"An indispensable part of the lawyer's library."—*Solicitors' Journal.*

"The book is invaluable: where the cases are silent the author has taken pains to ascertain what the law would be if brought into question."—*Law Journal.*

"Nowhere has the subject been treated so exhaustively, and, we may add, so scientifically, as by Mr. Goddard. We recommend it to the most careful study of the law student, as well as to the library of the practitioner."—*Law Times.*

Innes' Digest of the English Law of Easements. Third Edition. By MR. JUSTICE INNES, lately one of the Judges of Her Majesty's High Court of Judicature, Madras. Royal 12mo. 1884. 6*s.*

ECCLESIASTICAL LAW.—Phillimore's Ecclesiastical Law of the Church of England. With Supplement. By the Right. Hon. Sir ROBERT PHILLIMORE, D.C.L. 2 vols. 8vo. 1873-76. (Published at 3*l.* 7*s.* 6*d.*) *Reduced to net*, 1*l.* 10*s.*

ELECTION IN EQUITY.—Serrell's Equitable Doctrine of Election. By GEORGE SERRELL, M.A., LL.D., Esq., Barrister-at-Law. Royal 12mo. 1891. 7*s.* 6*d.*

"The work is well executed, and will be of service to all who desire to master the doctrine of election."—*Law Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

ELECTIONS.—Loader's The Candidate's and Election Agent's Guide; for Parliamentary and Municipal Elections, with an Appendix of Forms and Statutes. By JOHN LOADER, Esq., Barrister-at-Law. Demy 12mo. 1885. 7*s.* 6*d.*

"The book is a thoroughly practical one."—*Solicitors' Journal.*

Rogers on Elections.—In two parts.

Part I. REGISTRATION, including the Practice in Registration Appeals; Parliamentary, Municipal, and Local Government; with Appendices of Statutes, Orders in Council, and Forms. Fifteenth Edition. By MAURICE POWELL, of the Inner Temple, Esq., Barrister-at-Law. Royal 12mo. 1890. 1*l.* 1*s.*

"The practitioner will find within these covers everything which he can be expected to know, well arranged and carefully stated."—*Law Times*, July 12, 1890.

Part II. ELECTIONS AND PETITIONS. Parliamentary and Municipal, with an Appendix of Statutes and Forms. Fifteenth Edition. Incorporating all the Decisions of the Election Judges, with Statutes to June, 1886, and a new and exhaustive Index. By JOHN CORRIE CARTER, and J. S. SANDARS, Esqrs., Barristers-at-Law. Royal 12mo. 1886. 1*l.* 1*s.*

"A very satisfactory treatise on election law . . . . . his chapters on election expenses and illegal practices are well arranged, and tersely expressed. The completeness and general character of the book as regards the old law are too well known to need description."—*Solicitors' Journal.*

ELECTRIC LIGHTING.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Cunynghame's Treatise on the Law of Electric Lighting, with the Acts of Parliament, and Rules and Orders of the Board of Trade, a Model Provisional Order, and a set of Forms, to which is added a Description of the Principal Apparatus used in Electric Lighting, with Illustrations. By HENRY CUNYNGHAME, Barrister-at-Law. Royal 8vo. 1883. 12*s.* 6*d.*

EMPLOYERS' LIABILITY.—Firth's Law relating to the Liability of Employers for Injuries suffered by their Servants in the course of their Employment.—By T. W. STAPLEE FIRTH, Solicitor (The Sir Henry James Prize Essay). Demy 8vo. 1890. *Net* 2*s.* 6*d.*

EQUITY, *and Vide* CHANCERY.

Chitty's Index.—*Vide* "Digests."

Mews' Digest.—*Vide* "Digests."

Serrell.—*Vide* "Election in Equity."

Seton's Forms of Decrees, Judgments, and Orders in the High Court of Justice and Courts of Appeal, having especial reference to the Chancery Division, with Practical Notes. Fourth Edition. 2 vols. in 3. Royal 8vo. 1877—1879. *Reduced to net* 30*s.*

Shearwood's Introduction to the Principles of Equity. By JOSEPH A. SHEARWOOD, Author of "A Concise Abridgment of Real and Personal Property," &c., Barrister-at-Law. 8vo. 1885. 6*s.*

Smith's Manual of Equity Jurisprudence.—A Manual of Equity Jurisprudence for Practitioners and Students, founded on the Works of Story, Spence, and other writers, comprising the Fundamental Principles and the points of Equity usually occurring in General Practice. By JOSIAH W. SMITH, Q.C. Fourteenth Edition. By J. TRUSTRAM, LL.M., Esq., Barrister-at-Law. 12mo. 1889. 12*s.* 6*d.*

"Still holds its own as the most popular first book of equity jurisprudence, and one which every student must of necessity read."—*Law Journal*, September 21, 1889.

"It will be found as useful to the practitioner as to the student."—*Solicitors' Journal.*

"A book that must very nearly be learnt by heart."—*The Jurist*, September, 1889.

"We still think that the student of Equity will do well to read the book of the late Mr. Josiah Smith, especially now that a new edition has appeared."—*Law Notes*, September, 1889.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

EQUITY—*continued.*

Smith's Practical Exposition of the Principles of Equity, illustrated by the Leading Decisions thereon. For the use of Students and Practitioners. Second Edition. By H. ARTHUR SMITH, M.A., LL.B., Esq., Barrister-at-Law. Demy 8vo. 1888. 21*s.*

"This excellent practical exposition of the principles of equity is a work one can well recommend to students either for the bar or the examinations of the Incorporated Law Society. It will also be found equally valuable to the busy practitioner. It contains a mass of information well arranged, and is illustrated by all the leading decisions. All the legislative changes that have occurred since the publication of the first edition have been duly incorporated in the present issue."—*Law Times.*

ESTOPPEL.—Everest and Strode's Law of Estoppel. By LANCELOT FIELDING EVEREST, and EDMUND STRODE, Esqrs., Barristers-at-Law. Demy 8vo. 1884. 18*s.*

"A useful repository of the case law on the subject."—*Law Journal.*

EXAMINATION GUIDES.—Bedford's Digest of the Preliminary Examination Questions in Latin Grammar, Arithmetic, French Grammar, History and Geography, with the Answers. Second Edition. Demy 8vo. 1882. 18*s.*

Bedford's Student's Guide to the Ninth Edition of Stephen's New Commentaries on the Laws of England.—Third Edition. Demy 8vo. 1884. 7*s. 6d.*

Haynes and Nelham's Honours Examination Digest, comprising all the Questions in Conveyancing, Equity, Common Law, Bankruptcy, Probate, Divorce, Admiralty, and Ecclesiastical Law and Practice asked at the Solicitors' Honours Examinations, with Answers thereto. By JOHN F. HAYNES, LL.D., and THOMAS A. NELHAM, Solicitor (Honours). Demy 8vo. 1883. 15*s.*

"Students going in for honours will find this one to their advantage."—*Law Times.*

Napier's Modern Digest of the Final Examinations; a Modern Digest of the Law necessary to be known for the Final Examination of the Incorporated Law Society, done into Questions and Answers; and a Guide to a Course of Study for that Examination. By T. BATEMAN NAPIER, LL.D., London, of the Inner Temple, Barrister-at-Law. Demy 8vo. 1887. 18*s.*

"As far as we have tested them we have found the questions very well framed, and the answers to them clear, concise and accurate. If used in the manner that Dr. Napier recommends that it should be used, that is, together with the text-books, there can be little doubt that it will prove of considerable value to students."—*The Jurist.*

Napier & Stephenson's Digest of the Subjects of Probate, Divorce, Bankruptcy, Admiralty, Ecclesiastical and Criminal Law necessary to be known for the Final Examination, done into Questions and Answers. With a Preliminary Chapter on a Course of Study for the above Subjects. By T. BATEMAN NAPIER and RICHARD M. STEPHENSON, Esqrs., Barristers-at-Law. Demy 8vo. 1888. 12*s.*

"It is concise and clear in its answers, and the questions are based on points, for the most part, material to be known."—*Pump Court.*

Napier & Stephenson's Digest of the Leading Points in the Subject of Criminal Law necessary to be known for Bar and University Law Examinations. Done into Questions and Answers. By T. BATEMAN NAPIER and RICHARD M. STEPHENSON, Esqrs., Barristers-at-Law. Demy 8vo. 1888. 5*s.*

"We commend the book to candidates for the Bar and University Legal Examinations."—*Pump Court.*

Shearwood's Guide for Candidates for the Professions of Barrister and Solicitor.—Second Edition. By JOSEPH A. SHEARWOON, Esq., Barrister-at-Law. Demy 8vo. 1887. 6*s.*

"A practical little book for students."—*Law Quarterly Review.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

EXECUTIONS.—Edwards' Law of Execution upon Judgments and Orders of the Chancery and Queen's Bench Divisions of the High Court of Justice.—By C. JOHNSTON EDWARDS, of Lincoln's Inn, Esq., Barrister-at-Law. Demy 8vo. 1888. 16*s.*

"Will be found very useful, especially to solicitors. . . . In addition to the other good points in this book, it contains a copious collection of forms and a good index."—*Solicitors' Journal.*

"Mr. Edwards writes briefly and pointedly, and has the merit of beginning in each case at the beginning, without assuming that the reader knows anything. He explains who the sheriff is; what the Queen, in a writ *Elegit*, for example, orders him to do; how he does it; and what consequences ensue. The result is to make the whole treatise satisfactorily clear and easy to apprehend. If the index is good—as it appears to be—practitioners will probably find the book a thoroughly useful one."—*Law Quarterly Review.*

EXECUTORS.—Macaskie's Treatise on the Law of Executors and Administrators, and of the Administration of the Estates of Deceased Persons. With an Appendix of Statutes and Forms. By S. C. MACASKIE, Esq., Barrister-at-Law. 8vo. 1881. 10*s.* 6*d.*

Williams' Law of Executors and Administrators.—Ninth Edition. By the Hon. Sir ROLAND VAUGHAN WILLIAMS, a Justice of the High Court. 2 vols. Roy. 8vo. (*In the press.*)

EXTRADITION.—Kirchner's L'Extradition.—Recueil Renfermant in Extenso tous les Traités conclus jusqu'au 1er Janvier, 1883, entre les Nations civilisées, et donnant la solution précise des difficultés qui peuvent surgir dans leur application. Avec une Préface de Me GEORGES LACHAUD, Avocat à la Cour d'Appel de Paris. Publié sous les auspices de M. C. E. HOWARD VINCENT, Directeur des Affaires Criminelles de la Police Métropolitaine de Londres. Par F. J. KIRCHNER, Attaché à la Direction des Affaires Criminelles. In 1 vol. (1150 pp.). Royal 8vo. 1883. 2*l.* 2*s.*

FACTORS ACTS.—Boyd and Pearson's Factors Acts (1823 to 1877). With an Introduction and Explanatory Notes. By HUGH FENWICK BOYD and ARTHUR BEILBY PEARSON, Barristers-at-Law. Royal 12mo. 1884. 6*s.*

Neish & Carter's Factors Act, 1889: with Commentary and Notes; designed particularly for the use and guidance of Mercantile Men. By CHARLES H. L. NEISH and A. T. CARTER, Esqrs., Barristers-at-Law. Royal 12mo. 1890. 4*s.*

FACTORY ACTS.—Notcutt's Law relating to Factories and Workshops. Second Edition. 12mo. 1879. 9*s.*

FARM, LAW OF.—Dixon's Law of the Farm.—A Digest of Cases connected with the Law of the Farm, and including the Agricultural Customs of England and Wales. Fourth Edition. By HENRY PERKINS, Esq., Barrister-at-Law. 8vo. 1879. 1*l.* 6*s.*

"It is impossible not to be struck with the extraordinary research that must have been used in the compilation of such a book as this."—*Law Journal.*

FIXTURES.—Amos and Ferard on the Law of Fixtures and other Property partaking both of a Real and Personal Nature. Third Edition. By C. A. FERARD and W. HOWLAND ROBERTS, Esqrs., Barristers-at-Law. Demy 8vo. 1883. 18*s.*

"An accurate and well written work."—*Saturday Review.*

FORMS.—Allen.—*Vide* "Pleading."

Archibald.—*Vide* "Chamber Practice."

Bullen and Leake.—*Vide* "Pleading."

Chitty's Forms of Practical Proceedings in the Queen's Bench Division of the High Court of Justice. Twelfth Edition. By T. W. CHITTY, Esq., Barrister-at-Law. Demy 8vo. 1883. 1*l.* 18*s.*

"The forms themselves are brief and clear, and the notes accurate and to the point.—*Law Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

FORMS—*continued.*

Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom.—Fourth Edition, with Summaries of the Rules of the Supreme Court, Practical Notes and References to the Sixth Edition of "Daniell's Chancery Practice." By CHARLES BURNEY, B.A. (Oxon.), a Chief Clerk of the Hon. Mr. Justice Chitty. Royal 8vo. 1885. 2*l.* 10*s.*

"Mr. Burney appears to have performed the laborious task before him with great success."—*Law Journal.*

"The standard work on Chancery Procedure."—*Law Quarterly Review.*

FRAUD AND MISREPRESENTATION.—Moncreiff's Treatise on the Law relating to Fraud and Misrepresentation.—By the Hon. FREDERICK MONCREIFF, of the Middle Temple, Barrister-at-Law. Demy 8vo. 1891. 21*s.*

GOLD COAST.—Smith's Analytical Index to the Ordinances Regulating the Civil and Criminal Procedure of the Gold Coast Colony and of the Colony of Lagos. By SMALMAN SMITH, Esq., Barrister-at-Law, Judge of the Supreme Court of the Colony of Lagos. Royal 8vo. 1888. *Net*, 10*s.*

GOODWILL.—Allan's Law relating to Goodwill.—By CHARLES E. ALLAN, M.A., LL.B., Esq., Barrister-at-Law. Demy 8vo. 1889. 7*s.* 6*d.*

"A work of much value upon a subject which is by no means easy."—*Solicitors' Journal.*

HIGHWAYS.—Baker's Law of Highways in England and Wales, including Bridges and Locomotives. Comprising a succinct Code of the several Provisions under each Head, the Statutes at length in an Appendix; with Notes of Cases, Forms, and copious Index. By THOMAS BAKER, Esq., Barrister-at-Law. Royal 12mo. 1880. 15*s.*

Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Chambers' Law relating to Highways and Bridges, being the Statutes in full and brief Notes of 700 Leading Cases. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. 1878. 7*s.* 6*d.*

HOUSE TAX.—Ellis' Guide to the House Tax Acts, for the use of the Payer of Inhabited House Duty in England.—By ARTHUR M. ELLIS, LL.B. (Lond.), Solicitor, Author of "A Guide to the Income Tax Acts." Royal 12mo. 1885. 6*s.*

"We have found the information accurate, complete and very clearly expressed."—*Solicitors' Journal.*

HUSBAND AND WIFE.—Lush's Law of Husband and Wife; within the Jurisdiction of the Queen's Bench and Chancery Divisions. By C. MONTAGUE LUSH, Esq., Barrister-at-Law. 8vo. 1884. 20*s.*

"Mr. Lush has one thing to recommend him most strongly, and that is his accuracy."—*Law Magazine.*

INCOME TAX.—Ellis' Guide to the Income Tax Acts.—For the use of the English Income Tax Payer. Second Edition. By ARTHUR M. ELLIS, LL.B. (Lond.), Solicitor. Royal 12mo. 1886. 7*s.* 6*d.*

"Contains in a convenient form the law bearing upon the Income Tax."—*Law Times.*

INLAND REVENUE CASES.—Highmore's Summary Proceedings in Inland Revenue Cases in England and Wales.—Second Edition. By N. J. HIGHMORE, Esq., Barrister-at-Law, and of the Solicitors' Department, Inland Revenue. Roy. 12mo. 1887. 7*s.* 6*d.*

"Is very complete. Every possible information is given."—*Law Times.*

INSURANCE.—Arnould on the Law of Marine Insurance.—Sixth Edition. By DAVID MACLACHLAN, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1887. 3*l.*

"As a text book, 'Arnould' is now all the practitioner can want."—*Law Times.*

Lowndes' Practical Treatise on the Law of Marine Insurance.—By RICHARD LOWNDES. Author of "The Law of General Average," &c. Second Edition. Demy 8vo. 1885. 12*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

INSURANCE—*continued.*

Lowndes' Insurable Interest and Valuations.—By RICHARD LOWNDES. Demy 8vo. 1884. 5*s.*

McArthur on the Contract of Marine Insurance.—Second Edition. By CHARLES MCARTHUR, Average Adjuster. Demy 8vo. 1890. 16*s.*

INTERNATIONAL LAW.—Kent's International Law.—Kent's Commentary on International Law. Edited by J. T. ABDY, LL.D., Judge of County Courts. Second Edition. Crown 8vo. 1878. 10*s.* 6*d.*

Nelson's Private International Law.—Selected Cases, Statutes, and Orders illustrative of the Principles of Private International Law as Administered in England, with Commentary. By HORACE NELSON, M.A., B.C.L., Barrister-at-Law. Roy. 8vo. 1889. 21*s.*

"The notes are full of matter, and avoid the vice of discursiveness, cases being cited for practically every proposition."—*Law Times.*

Wheaton's Elements of International Law; Third English Edition. Edited with Notes and Appendix of Statutes and Treaties. By A. C. BOYD, Esq., Barrister-at-Law. Royal 8vo. 1889. 1*l.* 10*s.*

"A handsome and useful edition of a standard work."—*Law Quarterly Review.*

"Wheaton stands too high for criticism, whilst Mr. Boyd's merits as an editor are almost as well established."—*Law Times*, November 30, 1889.

INTERROGATORIES.—Sichel and Chance.—*Vide* "Discovery."

JOINT STOCKS.—Palmer.—*Vide* "Company Law," "Conveyancing," and "Winding-up."

Thring's Joint Stock Companies' Law.—The Law and Practice of Joint Stock and other Companies, including the Companies Acts, 1862 to 1886, with Notes, Orders, and Rules in Chancery, a Collection of Precedents of Memoranda and Articles of Association, and other Forms required in Making and Administering a Company. Also the Partnership Law Amendment Act, the Life Assurance Companies Acts, and other Acts relating to Companies. By LORD THRING, K.C.B., formerly the Parliamentary Counsel. Fifth Edition. By J. M. RENDEL, Esq., Barrister-at-Law. Royal 8vo. 1889. 1*l.* 10*s.*

"The highest authority on the subject."—*The Times.*

"The book has long taken its place among the authoritative expositions of the law of companies. Its very useful forms are a special feature of the book, which will be of great value to practitioners."—*Law Journal*, September 14, 1889.

JUDGES' CHAMBER PRACTICE.—Archibald.—*Vide* "Chamber Practice."

JUDICATURE ACTS.—Wilson's Practice of the Supreme Court of Judicature: containing the Acts, Orders, Rules, and Regulations relating to the Supreme Court. With Practical Notes. Seventh Edition. By CHARLES BURNEY, a Chief Clerk of the Hon. Mr. Justice Chitty, Editor of "Daniell's Chancery Forms;" M. MUIR MACKENZIE, and C. A. WHITE, Esqrs., Barristers-at-Law. Roy. 8vo. 1888. 1*l.*

"A thoroughly reliable and most conveniently arranged practice guide."—*Law Times*

JUSTICE OF THE PEACE.—Stone's Practice for Justices of the Peace, Justices' Clerks and Solicitors at Petty and Special Sessions, in Summary matters, and Indictable Offences, with a list of Summary Convictions, and matters not Criminal. With Forms. Ninth Edit. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1882. 1*l.* 5*s.*

Wigram's Justice's Note Book.—Containing a short account of the Jurisdiction and Duties of Justices, and an Epitome of Criminal Law. By the late W. KNOX WIGRAM, Esq., Barrister-at-Law, J. P. Middlesex and Westminster. Fifth Edition. Revised by WALTER S. SHIRLEY, Esq., Barrister-at-Law. Royal 12mo. 1888. 12*s.* 6*d.*

"The style is clear, and the expression always forcible, and sometimes humorous. The book will repay perusal by many besides those who, as justices, will find it an indispensable companion."—*Law Quarterly Review.*

"We can thoroughly recommend the volume to magistrates."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LAND TAX.—Bourdin's Land Tax.—An Exposition of the Land Tax. Third Edition. Including the Recent Judicial Decisions, and the Incidental Changes in the Law effected by the Taxes Management Act, with other Additional Matter. Thoroughly revised and corrected. By SHIRLEY BUNBURY, of the Inland Revenue Department, Assistant Registrar of the Land Tax. Royal 12mo. 1885. 6*s.*

LANDLORD AND TENANT.—Woodfall's Law of Landlord and Tenant.—With a full Collection of Precedents and Forms of Procedure; containing also a collection of Leading Propositions. Fourteenth Edit. By J. M. LELY, Esq., Barrister-at-Law, Editor of "Chitty's Statutes," "Wharton's Law Lexicon," &c. Roy. 8vo. 1889. 1*l.* 18*s.*

"The editor has expended elaborate industry and systematic ability in making the work as perfect as possible."—*Solicitors' Journal.*

Lely and Peck.—*Vide* "Leases."

LANDS CLAUSES ACTS.—Jepson's Lands Clauses Consolidation Acts; with Decisions, Forms, and Table of Costs. By ARTHUR JEPSON, Esq., Barrister-at-Law. Demy 8vo. 1880. 18*s.*

LAW LIST.—Law List (The).—Comprising the Judges and Officers of the different Courts of Justice, Counsel, Special Pleaders, Conveyancers, Solicitors, Proctors, Notaries, &c., in England and Wales; the Circuits, Judges, Treasurers, Registrars, and High Bailiffs of the County Courts; Metropolitan and Stipendiary Magistrates, Official Receivers under the Bankruptcy Act, Law and Public Officers in England and the Colonies, Foreign Lawyers with their English Agents, Clerks of the Peace, Town Clerks, Coroners, &c., &c., and Commissioners for taking Oaths, Conveyancers Practising in England under Certificates obtained in Scotland. Compiled, so far as relates to Special Pleaders, Conveyancers, Solicitors, Proctors and Notaries, by JOHN SAMUEL PURCELL, C.B., Controller of Stamps, and Registrar of Joint Stock Companies, Somerset House, and Published by the Authority of the Commissioners of Inland Revenue. 1891. (*Published about March* 1.) (*Net cash,* 9*s.*) 10*s.* 6*d.*

LAW QUARTERLY REVIEW—Edited by Sir FREDERICK POLLOCK, Bart., M.A., LL.D., Corpus Professor of Jurisprudence in the University of Oxford. Vols. I., II., III., IV., V. and VI. Royal 8vo. 1885-90. *Each,* 12*s.*

☞ *Subscription* 10*s. per annum, post free.* (*Foreign postage* 2*s.* 6*d. extra.*)

The Review includes:—The discussion of current decisions of importance in the Courts of this country, and (so far as practicable) of the Colonies, the United States, British India, and other British Possessions where the Common Law is administered; the consideration of topics of proposed legislation before Parliament; the treatment of questions of immediate political and social interest in their legal aspect; inquiries into the history and antiquities of our own and other systems of law and legal institutions. Endeavour is also made to take account of the legal science and legislation of Continental States in so far as they bear on general jurisprudence, or may throw light by comparison upon problems of English or American legislation. The current legal literature of our own country receives careful attention; and works of serious importance, both English and foreign, are occasionally discussed at length.

LAWYER'S ANNUAL LIBRARY.—(1) The Annual Practice.—By SNOW, BURNEY, and STRINGER. (2) The Annual Digest.—By MEWS. (3) The Annual Statutes.—By LELY. (4) The Annual County Court Practice.—By His Honour JUDGE HEYWOOD.

The Complete Series, as above, delivered on the day of publication, *net,* 2*l.* Nos. 1, 2, and 3 only, *net,* 1*l.* 10*s.* Nos. 2, 3, and 4 only, *net,* 1*l.* 10*s.* (*Carriage extra,* 2*s.*)

☞ *Subscriptions, payable on or before August 1st in each year.*
*Full prospectus forwarded on application.*

LAWYER'S COMPANION.—*Vide* "Diary."

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LEADING CASES.—Ball's Leading Cases. *Vide* "Torts."

Haynes' Student's Leading Cases. Being some of the Principal Decisions of the Courts in Constitutional Law, Common Law, Conveyancing and Equity, Probate, Divorce, and Criminal Law. With Notes for the use of Students. Second Edition. By JOHN F. HAYNES, LL.D. Demy 8vo. 1884. 16*s.*

"Will prove of great utility, not only to students, but practitioners. The notes are clear, pointed and concise."—*Law Times.*

Shirley's Selection of Leading Cases in the Common Law. With Notes. By W. SHIRLEY SHIRLEY, Esq., Barrister-at-Law. Third Edition. Demy 8vo. 1886. 16*s.*

"If any words of praise of ours can add to its well-deserved reputation, we give the reader carte blanche to supply them on our behalf out of his own thrilling eloquence and vivid imagination, and we will undertake to ratify them."—*The Jurist.*

Shirley's Selection of Leading Cases in the Criminal Law. With Notes. By W. S. SHIRLEY, Esq., Barrister-at-Law. 8vo. 1888. 6*s.*

"Will undoubtedly prove of value to students."—*Law Notes.*

LEASES.—Lely and Peck's Precedents of Leases for Years, and other Contracts of Tenancy, and Contracts relating thereto; mainly selected or adapted from existing Collections, including many additional Forms, with a short Introduction and Notes. By J. M. LELY and W. A. PECK, Barristers-at-Law. Royal 8vo. 1889. 10*s.* 6*d.*

"Varied, well considered, and thoroughly practical . . . while a useful addition to the library of the conveyancing counsel, will be still more useful to conveyancing solicitors and estate agents."—*Law Times*, November 9, 1889.

LEXICON.—*Vide* "Dictionary."

LIBEL AND SLANDER.—Odgers on Libel and Slander.—A Digest of the Law of Libel and Slander: the Evidence, Procedure and Practice, both in Civil and Criminal Cases, and Precedents of Pleadings. Second Edition, with a SUPPLEMENT, bringing the Law down to June, 1890. By W. BLAKE ODGERS, LL.D., Barrister-at-Law. Royal 8vo. 1890. 1*l.* 12*s.*

*** *The Supplement, containing the Law of Libel Amendment Act*, 1888, *with Notes and Addenda of Cases, separately. Net*, 1*s.* 6*d.*

"The best modern book on the law of libel."—*Daily News.*

"A full, accurate, and satisfactory guide."—*Solicitors' Journal.*

LIBRARIES AND MUSEUMS.—Chambers' Digest of the Law relating to Public Libraries and Museums, and Literary and Scientific Institutions: with much Practical Information useful to Managers, Committees and Officers of all classes of Associations and Clubs connected with Literature, Science and Art; including Precedents of By-Laws and Regulations, the Statutes in Full, and brief Notes of Leading Cases. Third Edition. By GEO. F. CHAMBERS, Esq., Barrister-at-Law. Roy. 8vo. 1889. 8*s.* 6*d.*

LICENSING.—Lely and Foulkes' Licensing Acts, 1828, 1869, and 1872—1874; with Notes to the Acts, a Summary of the Law, and an Appendix of Forms. Third Edit. By J. M. LELY and W. D. I. FOULKES, Esqrs., Barristers-at-Law. Roy. 12mo. 1887. 10*s.* 6*d.*

"We do not know of a more compact or useful treatise on the subject."—*Sol. Jour.*

LOCAL AND MUNICIPAL GOVERNMENT.—Bazalgette and Humphreys' Law relating to County Councils: being the Local Government Act, 1888, County Electors Act, 1888, the Incorporated Clauses of the Municipal Corporations Act, 1882, and a compendious Introduction and Notes; with Analysis of Statutes affecting the same, Orders in Council, Circulars, and a Copious Index. By C. N. BAZALGETTE and GEORGE HUMPHREYS, Barristers-at-Law, Joint Authors of "The Law of Local and Municipal Government." Third Edition. By GEORGE HUMPHREYS, Esq. Royal 8vo. 1889. 7*s.* 6*d.*

"The most stately as regards size, and the best in point of type of all the works. There is a good introduction . . . the notes are careful and helpful."—*Solicitors' Journal.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LOCAL AND MUNICIPAL GOVERNMENT—*continued.*

Bazalgette and Humphreys' Law relating to Local and Municipal Government. Comprising the Statutes relating to Public Health, Municipal Corporations, Highways, Burial, Gas and Water, Public Loans, Compulsory Taking of Lands, Tramways, Electric Lighting, Artizans' Dwellings, &c., Rivers' Pollution, the Clauses Consolidation Acts, and many others, fully annotated with cases up to date, a selection of the Circulars of the Local Government Board, with a Table of upwards of 2,500 Cases, and full Index. With Addenda containing the Judicial Decisions and Legislation relating to Local and Municipal Government since 1885. By C. NORMAN BAZALGETTE and GEORGE HUMPHREYS, Esqrs., Barristers-at-Law. Sup. royal 8vo. 1888. *3l. 3s.*

*** *The Addenda may be had separately. Net, 2s. 6d.*

"The book is thoroughly comprehensive of the law on all points of which it professes to treat."—*Law Journal.*

"The work is one that no local officer should be without; for nothing short of a whole library of statutes, reports, and handbooks could take its place."—*Municipal Review.*

Chambers' Popular Summary of the Law relating to Local Government, forming a complete Guide to the new Act of 1888. Second Edition. By G. F. CHAMBERS, Barrister-at-Law. Imp. 8vo. 1888. (*Or bound in Cloth with copy of Act, 5s. 6d.*) *Net, 2s. 6d.*

MAGISTERIAL LAW.—Shirley's Elementary Treatise on Magisterial Law, and on the Practice of Magistrates' Courts.—By W. S. SHIRLEY, Esq., Barrister-at-Law. Roy. 12mo. 1881. *6s. 6d.*

Wigram.—*Vide* "Justice of the Peace."

MALICIOUS PROSECUTIONS.—Stephen's Law relating to Actions for Malicious Prosecutions.—By HERBERT STEPHEN, LL.M., of the Inner Temple, Barrister-at-Law, part Author of "A Digest of the Criminal Law Procedure." Royal 12mo. 1888. *6s.*

"A reliable text-book upon the law of malicious prosecution."—*Law Times.*

MARITIME DECISIONS.—Douglas' Maritime Law Decisions.—An Alphabetical Reference Index to Recent and Important Maritime Decisions. Compiled by ROBT. R. DOUGLAS. Demy 8vo. 1888. *7s. 6d.*

Marine Insurance.—*Vide* "Insurance."

MARRIAGE.—Kelly's French Law of Marriage, and the Conflict of Laws that arises therefrom. By E. KELLY, M.A., of the New York Bar, Licencié en Droit de la Faculté de Paris. Roy. 8vo. 1885. *6s.*

MARRIAGE SETTLEMENTS.—Banning's Concise Treatise on the Law of Marriage Settlements; with an Appendix of Statutes. By H. T. BANNING, Esq., Barrister-at-Law. Demy 8vo. 1884. *15s.*

MARRIED WOMEN'S PROPERTY.—Lush's Married Women's Rights and Liabilities in relation to Contracts, Torts, and Trusts. By MONTAGUE LUSH, Esq., Barrister-at-Law, Author of "The Law of Husband and Wife." Royal 12mo. 1887. *5s.*

"Well arranged, clearly written, and has a good index."—*Law Times.*

Smith's Married Women's Property Acts, 1882 and 1884, with an Introduction and Critical and Explanatory Notes, together with the Married Women's Property Acts, 1870 and 1874, &c. 2nd Edit. Revised. By H. A. SMITH, Esq., Barrister-at-Law. Roy. 12mo. 1884. *6s.*

MASTER AND SERVANT.—Macdonell's Law of Master and Servant. Part I. Common Law. Part II. Statute Law. By JOHN MACDONELL, M.A., Esq., Barrister-at-Law. Demy 8vo. 1883. *1l. 5s.*

"A work which will be of real value to the practitioner."—*Law Times.*

MAYOR'S COURT PRACTICE.—Candy's Mayor's Court Practice.—The Jurisdiction, Process, Practice and Mode of Pleading in Ordinary Actions in the Mayor's Court in London. By GEORGE CANDY, Esq., one of Her Majesty's Counsel. Demy 8vo. 1879. *14s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

MERCANTILE LAW.—Russell's Treatise on Mercantile Agency. Second Edition. 8vo. 1873. 14*s.*

Smith's Compendium of Mercantile Law.—Tenth Edition. By JOHN MACDONELL, Esq., a Master of the Supreme Court of Judicature, assisted by GEO. HUMPHREYS, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1890. 2*l.* 2*s.*

"Of the greatest value to the mercantile lawyer."—*Law Times*, March 22, 1890.
"We have no hesitation in recommending the work before us to the profession and the public as a reliable guide to the subjects included in it, and as constituting one of the most scientific treatises extant on mercantile law."—*Solicitors' Journal*, May 10, 1890.

Tudor's Selection of Leading Cases on Mercantile and Maritime Law.—With Notes. By O. D. TUDOR, Esq., Barrister-at-Law. Third Edition. Royal 8vo. 1884. 2*l.* 2*s.*

Wilson's Mercantile Handbook of the Liabilities of Merchant, Shipowner, and Underwriter on Shipments by General Vessels.—By A. WILSON, Solicitor and Notary. Royal 12mo. 1883. 6*s.*

Wood's Mercantile Agreements.—The Interpretation of Mercantile Agreements: A Summary of the Decisions as to the Meaning of Words and Provisions in Written Agreements for the Sale of Goods, Charter-Parties, Bills of Lading, and Marine Policies. With an Appendix containing a List of Words and Expressions used in, or in connection with, Mercantile Agreements, and a List of Mercantile Usages. By JOHN DENNISTOUN WOOD, Esq., Barrister-at-Law Royal 8vo. 1886. 18*s.*

"A book of great use in the interpretation of written mercantile agreements."—*Law Journal.*

MERCHANDISE MARKS ACT.—Payn's Merchandise Marks Act, 1887.—With special reference to the Important Sections and the Customs Regulations and Orders made thereunder, together with the Conventions with Foreign States for Protection of Trade Marks, and Orders in Council, &c. By HOWARD PAYN, Barrister-at-Law, and of the Secretary's Department of the Board of Customs. Royal 12mo. 1888. 3*s.* 6*d.*

"Mr. Payn's lucid introduction places the subject very clearly before the reader, and his book must be a safe guide to all who are interested in the act."—*Law Times*, Feb. 1888.

METROPOLIS BUILDING ACTS.—Woolrych's Metropolitan Building Acts, together with such clauses of the Metropolis Management Acts as more particularly relate to the Building Acts, with Notes and Forms. Third Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. 12mo. 1882. 10*s.*

MINES.—Rogers' Law relating to Mines, Minerals and Quarries in Great Britain and Ireland, with a Summary of the Laws of Foreign States, &c. Second Edition Enlarged. By His Honor Judge ROGERS. 8vo. 1876. 1*l.* 11*s.* 6*d.*

MORTGAGE.—Coote's Treatise on the Law of Mortgage.—Fifth Edition. Thoroughly revised. By WILLIAM WYLLYS MACKESON, Esq., one of Her Majesty's Counsel, and H. ARTHUR SMITH, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1884. 3*l.*

"A complete, terse and practical treatise for the modern lawyer."—*Solicitors' Journal.*

MUNICIPAL CORPORATIONS.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Lely's Law of Municipal Corporations.—Containing the Municipal Corporation Act, 1882, and the Enactments incorporated therewith. With Notes. By J. M. LELY, Esq., Barrister-at-Law. Demy 8vo. 1882. 15*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

NAVY.—Thring's Criminal Law of the Navy, with an Introductory Chapter on the Early State and Discipline of the Navy, the Rules of Evidence, and an Appendix comprising the Naval Discipline Act and Practical Forms. Second Edition. By THEODORE THRING, Esq., Barrister-at-Law, and C. E. GIFFORD, Assistant-Paymaster, Royal Navy. 12mo. 1877. 12*s.* 6*d.*

NEGLIGENCE.—Smith's Treatise on the Law of Negligence Second Edition. By HORACE SMITH, Esq., Barrister-at-Law, Editor of "Addison on Contracts, and Torts," &c. 8vo. 1884. 12*s.* 6*d.*

"Of great value both to the practitioner and student of law."—*Solicitors' Journal.*

NISI PRIUS.—Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—Sixteenth Edition. By MAURICE POWELL, Esq., Barrister-at-Law. 2 vols. Demy 8vo. 1891.

(*Nearly ready.*)

"Continues to be a vast and closely packed storehouse of information on practice at Nisi Prius."—*Law Journal.*

NONCONFORMISTS.—Winslow's Law Relating to Protestant Nonconformists and their Places of Worship; being a Legal Handbook for Nonconformists. By REGINALD WINSLOW, Esq., Barrister-at-Law. Post 8vo. 1886. 6*s.*

NOTARY.—Brooke's Treatise on the Office and Practice of a Notary of England.—With a full collection of Precedents. Fifth Ed. By G. F. CHAMBERS, Esq., Barrister-at-Law. Demy 8vo. 1890. 1*l.* 1*s.*

OATHS.—Stringer's Oaths and Affirmations in Great Britain and Ireland; being a Collection of Statutes, Cases, and Forms, with Notes and Practical Directions for the use of Commissioners for Oaths, and of all Courts of Civil Procedure and Offices attached thereto. [In succession to "Braithwaite's Oaths."] By FRANCIS A. STRINGER, of the Central Office, Supreme Court of Judicature, one of the Editors of the "Annual Practice." Crown 8vo. 1890. 3*s.* 6*d.*

"Indispensable to all commissioners."—*Solicitors' Journal*, Jan. 11, 1890.
"A most excellent little handbook."—*Law Times*, Feb. 1, 1890.

PARISH LAW.—Steer's Parish Law; being a Digest of the Law relating to the Civil and Ecclesiastical Government of Parishes and the Relief of the Poor. Fifth Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1887. 18*s.*

"An exceedingly useful compendium of Parish Law."—*Law Times.*
"A very complete and excellent guide to Parish Law."—*Solicitors' Journal.*
"Every subject that can be considered parochial is, we think, contained in this volume, and the matter is brought down to date. It is a compendium which is really compendious."—*Law Journal*, Jan. 21, 1888.

PARTNERSHIP.—Pollock's Digest of the Law of Partnership; incorporating the Partnership Act, 1890. Fifth Edition. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law. Author of "Principles of Contract," "The Law of Torts," &c. Demy 8vo. 1890. 8*s.* 6*d.*

"What Sir Frederick Pollock has done he has done well, and we are confident this book will be most popular as well as extremely useful."—*Law Times*, Dec. 13, 1890.

Turner.—*Vide* "Conveyancing."

PATENTS.—Aston's (T.) Patents, Designs and Trade Marks Act, 1883, with Notes and Index to the Act, Rules and Forms. By THEODORE ASTON, Q.C. Royal 12mo. 1884. 6*s.*

Edmunds' Patents, Designs and Trade Marks Acts, 1883 to 1888, Consolidated, with an Index. By LEWIS EDMUNDS, D.Sc., LL.B., Barrister-at-Law. Imp. 8vo. 1889. *Net* 2*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

PATENTS—*continued.*

Edmunds on Patents.—The Law and Practice of Letters Patent for Inventions; with the Patents Acts and Rules annotated, and the International Convention, a full collection of Statutes, Forms, and Precedents, and an Outline of Foreign and Colonial Patent Laws, &c. By LEWIS EDMUNDS, assisted by A. WOOD RENTON, Esqrs., Barristers-at-Law. Royal 8vo. (992 pp.). 1890. *1l. 12s.*

"We have nothing but commendation for the book. Conceived in a large and comprehensive spirit, it is well and thoroughly carried out. . . . The statement of the existing law is accurate and clear. . . . The book is one to be recommended."—*Solicitors' Journal*, June 14, 1890.

"We have no hesitation in saying that the book is a useful and exhaustive one, and one which could not have been produced without much labour and considerable research. It describes the law of letters patent and its history, including proceedings in the Privy Council, international arrangements, and an abridgment of foreign laws on the subject. It would be difficult to make it more complete, and it is printed on good paper."—*Law Times*, June 21, 1890.

"Taking the book as a whole, it is undoubtedly the most comprehensive book that has yet been written upon the special branch of law, and, having examined it in some detail, we can commend it as answering well to the many tests we have applied."—*Law Journal*, June 21, 1890.

Johnson's Patentees' Manual.—A Treatise on the Law and Practice of Patents for Inventions. With an Appendix of Statutes, Rules, and Foreign and Colonial Patent Laws, International Convention, and Protocol. Sixth Edition. By JAMES JOHNSON, Esq., Barrister-at-Law; and J. HENRY JOHNSON, Solicitor and Patent Agent. Demy 8vo. 1890. *10s. 6d.*

Morris's Patents Conveyancing.—Being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions. Arranged as follows:—Common Forms, Agreements, Assignments, Mortgages, Special Clauses, Licences, Miscellaneous; Statutes, Rules, &c. With Dissertations and Copious Notes on the Law and Practice. By ROBERT MORRIS, Esq., Barrister-at-Law. Royal 8vo. 1887. *1l. 5s.*

"Mr. Morris' forms seem to us to be well selected, well arranged, and thoroughly practical."—*Law Times.*

"The dissertations contain a large amount of valuable and accurate information. The Index is satisfactory."—*Solicitors' Journal.*

Munro's Patents, Designs and Trade Marks Act, 1883, with the Rules and Instructions, together with Pleadings, Orders and Precedents. By J. E. CRAWFORD MUNRO, Esq., Barrister-at-Law. Royal 12mo. 1884. *10s. 6d.*

Thompson's Handbook of Patent Law of all Countries.—By WM. P. THOMPSON, Head of the International Patent Office, Liverpool. Eighth Edition. 12mo. 1889. *Net, 2s. 6d.*

PERPETUITIES.—Marsden's Rule against Perpetuities.—A Treatise on Remoteness in Limitation; with a chapter on Accumulation and the Thelluson Act. By REGINALD G. MARSDEN, Esq., Barrister-at Law. Demy 8vo. 1883. *16s.*

PERSONAL PROPERTY.—Shearwood's Concise Abridgment of the Law of Personal Property; showing analytically its Branches and the Titles by which it is held. By J. A. SHEARWOOD, Esq., Barrister-at-Law. 1882. *5s. 6d.*

"Will be acceptable to many students, as giving them, in fact, a ready-made note book."—*Indermaur's Law Students' Journal.*

Smith.—*Vide* "Real Property."

PLEADING.—Allen's Forms of Indorsements of Writs of Summons, Pleadings, and other Proceedings in the Queen's Bench Division prior to Trial, pursuant to the Rules of the Supreme Court, 1883; with Introduction, &c. By GEORGE BAUGH ALLEN, Esq., Special Pleader, and WILFRED B. ALLEN Esq., Barrister-at-Law. Royal 12mo. 1883. *18s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

PLEADING—*continued.*

Bullen and Leake's Precedents of Pleadings, with Notes and Rules relating to Pleading. Fourth Edition. By THOMAS J. BULLEN, Esq., Special Pleader, and CYRIL DODD, Esq., Barrister-at-Law. Part I. Statements of Claim. Royal 12mo. 1882. 1*l.* 4*s.*

Part II. Statements of Defence. By THOMAS J. BULLEN and C. W. CLIFFORD, Esqrs., Barristers-at-Law. Royal 12mo. 1888. 1*l.* 4*s.*

"A very large number of precedents are collected together, and the notes are full and clear."—*Law Times.*

POISONS.—Reports of Trials for Murder by Poisoning; by Prussic Acid, Strychnia, Antimony, Arsenic and Aconitine; including the trials of Tawell, W. Palmer, Dove, Madeline Smith, Dr. Pritchard, Smethurst, and Dr. Lamson. With Chemical Introductions and Notes. By G. LATHAM BROWNE, Esq., Barrister-at-Law, and C. G. STEWART, Senior Assistant in the Laboratory of St. Thomas's Hospital, &c. Demy 8vo. 1883. 12*s.* 6*d.*

POWERS.—Farwell on Powers.—A Concise Treatise on Powers. By GEORGE FARWELL, Esq., Barrister-at-Law. 8vo. 1874. 1*l.* 1*s.*

PRINTERS, PUBLISHERS, &c.—Powell's Laws specially affecting Printers, Publishers and Newspaper Proprietors. By ARTHUR POWELL, Esq., Barrister-at-Law. Demy 8vo. 1889. 4*s.*

PROBATE.—Browne's Probate Practice: A Treatise on the Principles and Practice of the Court of Probate, in Contentious and Non-Contentious Business. By L. D. POWLES, Barrister-at-Law. Including Practical Directions to Solicitors for Proceedings in the Registry. By T. W. H. OAKLEY, of the Principal Registry, Somerset House. 8vo. 1881. 1*l.* 10*s.*

PUBLIC HEALTH.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Chambers' Digest of the Law relating to Public Health and Local Government.—With Notes of 1,260 leading Cases. The Statutes in full. A Table of Offences and Punishments, and a Copious Index. Eighth Edition (with Supplement corrected to May 21, 1887). Imperial 8vo. 1881. 16*s.*

*Or*, the above with the Law relating to Highways and Bridges. 1*l.*

Smith's Public Health Acts Amendment Act, 1890.—With Introduction, Notes, and References to Cases; also an Appendix, containing all the Material Sections of the Public Health Act, 1875; The Public Health (Rating of Orchards) Act, 1890; and The Infectious Diseases (Prevention) Act, 1890: and a Copious Index. By BOVILL SMITH, M.A., of the Inner Temple and Western Circuit, Barrister-at-Law. Royal 12mo. 1891. 6*s.*

PUBLIC MEETINGS.—Chambers' Handbook for Public Meetings, including Hints as to the Summoning and Management of them. Second Edition. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. Demy 8vo. 1886. *Net*, 2*s.* 6*d.*

QUARTER SESSIONS.—Archbold.—*Vide* "Criminal Law."

Leeming & Cross's General and Quarter Sessions of the Peace.—Their Jurisdiction and Practice in other than Criminal matters. Second Edition. By HORATIO LLOYD, Esq., Judge of County Courts, and H. F. THURLOW, Esq., Barrister-at-Law. 8vo. 1876. 1*l.* 1*s.*

Pritchard's Quarter Sessions.—The Jurisdiction, Practice and Procedure of the Quarter Sessions in Criminal, Civil, and Appellate Matters. By THOS. SIRRELL PRITCHARD, Esq., Barrister-at-Law. 8vo. 1875. (Published at 2*l.* 2*s.*) Reduced to *net* 12*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

RAILWAYS.—Browne and Theobald's Law of Railway Companies.—Being a Collection of the Acts and Orders relating to Railway Companies in England and Ireland, with Notes of all the Cases decided thereon, and Appendix of Bye-Laws and Standing Orders of the House of Commons. Second Edition. By J. H. BALFOUR BROWNE, Esq., one of Her Majesty's Counsel, and H. S. THEOBALD, Esq., Barrister-at-Law. Royal 8vo. 1888. 1*l.* 15*s.*

"Contains in a very concise form the whole law of railways."—*The Times.*

"The learned authors seem to have presented the profession and the public with the most ample information to be found whether they want to know how to start a railway, how to frame its bye-laws, how to work it, how to attack it for injury to person or property, or how to wind it up."—*Law Times.*

Macnamara.—*Vide* "Carriers."

Street.—*Vide* "Company Law."

RATES AND RATING.—Castle's Practical Treatise on the Law of Rating.—Second Edition. By EDWARD JAMES CASTLE, Esq., one of Her Majesty's Counsel. Demy 8vo. 1886. 25*s.*

"A correct, exhaustive, clear and concise view of the law."—*Law Times.*

Chambers' Law relating to Local Rates; with especial reference to the Powers and Duties of Rate-levying Local Authorities, and their Officers; comprising the Statutes in full and a Digest of 718 Cases. Second Edition. By G. F. CHAMBERS, Esq., Barrister-at-Law. Royal 8vo. 1889. 10*s.* 6*d.*

"A complete repertory of the statutes and case law of the subject."—*Law Journal.*

REAL ESTATE.—Foster's Law of Joint Ownership and Partition of Real Estate.—By EDWARD JOHN FOSTER, M.A., late of Lincoln's Inn, Barrister-at-Law. 8vo. 1878. 10*s.* 6*d.*

REAL PROPERTY.—Greenwood's Real Property Statutes; comprising those passed during the years 1874—1884, inclusive, consolidated with the earlier statutes thereby amended. With copious notes. Second Edition. By HARRY GREENWOOD, assisted by LEES KNOWLES, Esqrs., Barristers-at-Law. Demy 8vo. 1884. 1*l.* 5*s.*

"The second edition of this useful collection of statutes relating to real property will be heartily welcomed by conveyancers and real property lawyers. In referring to it as a collection of statutes, however, we do not fully describe it, because the method adopted by the author of grouping together the provisions of the various Acts, which are in *pari materiâ*, combined with the fullness and accuracy of the notes, entitles the book to rank high amongst treatises on the law of real property."—*Law Journal.*

Leake's Elementary Digest of the Law of Property in Land.—Containing: Introduction. Part I. The Sources of the Law.—Part II. Estates in Land. By STEPHEN MARTIN LEAKE, Barrister-at-Law. Demy 8vo. 8vo. 1874. 1*l.* 2*s.*

Leake's Digest of the Law of Property in Land.—Part III. The Law of Uses and Profits of Land. By STEPHEN MARTIN LEAKE, Barrister-at-Law, Author of "A Digest of the Law of Contracts." Demy 8vo. 1888. 1*l.* 2*s.*

Shearwood's Real Property.—A Concise Abridgment of the Law of Real Property and an Introduction to Conveyancing. Designed to facilitate the subject for Students preparing for examination. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. Third Edition. Demy 8vo. 1885. 8*s.* 6*d.*

"We heartily recommend the work to student's for any examination on real property and conveyancing, advising them to read it after a perusal of other works and shortly before going in for the examination."—*Law Student's Journal.*

"A very useful little work, particularly to students just before their examination."—*Gibson's Law Notes.*

"One of the most obvious merits of the book is its good arrangement. The author evidently understands 'the art of putting things.' All important points are so printed as to readily catch the eye."—*Law Times.*

Shelford's Real Property Statutes.—Ninth Edition. By T. H. CARSON, Esq., Barrister-at-Law. (*In preparation.*)

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

REAL PROPERTY—*continued.*

Smith's Real and Personal Property.—A Compendium of the Law of Real and Personal Property, primarily connected with Conveyancing. Designed as a second book for Students, and as a digest of the most useful learning for practitioners. By JOSIAH W. SMITH, B.C.L., Q.C. Sixth Edition. By the AUTHOR and J. TRUSTRAM, LL.M., Barrister-at-Law. 2 vols. Demy 8vo. 1884. *2l. 2s.*

"A book which he (the student) may read over and over again with profit and pleasure."—*Law Times.*

"Will be found of very great service to the practitioner."—*Solicitors' Journal.*

"The book will be found very handy for reference purposes to practitioners, and very useful to the industrious student as covering a great deal of ground."—*Law Notes.*

"A really useful and valuable work on our system of Conveyancing. We think this edition excellently done."—*Law Student's Journal.*

REGISTRATION.—Rogers.—*Vide* "Elections."

Coltman's Registration Cases.—Vol. I. (1879—1885). Royal 8vo. Calf. *Net, 2l. 8s.*

Fox's Registration Cases.—Vol. I., Part I. (1886), *net*, *4s.* Part II. (1887), *net*, *6s. 6d.* Part III. (1888), *net*, *4s.* Part IV. (1889), *net*, *4s.* (In continuation of Coltman.)

RENTS.—Harrison's Law Relating to Chief Rents and other Rentcharges and Lands as affected thereby, with a chapter on Restrictive Covenants and a selection of Precedents. By WILLIAM HARRISON, Solicitor. Demy 12mo. 1884. *6s.*

ROMAN LAW.—Goodwin's XII. Tables.—By FREDERICK GOODWIN, LL.D. London. Royal 12mo. 1886. *3s. 6d.*

Greene's Outlines of Roman Law.—Consisting chiefly of an Analysis and Summary of the Institutes. For the use of Students. By T. WHITCOMBE GREENE, Barrister-at-law. Fourth Edition. Foolscap 8vo. 1884. *7s. 6d.*

Ruegg's Student's "Auxilium" to the Institutes of Justinian.—Being a complete synopsis thereof in the form of Question and Answer. By ALFRED HENRY RUEGG, Esq., Barrister-at-Law. Post 8vo. 1879. *5s.*

SALES.—Blackburn on Sales. A Treatise on the Effect of the Contract of Sale on the Legal Rights of Property and Possession in Goods, Wares, and Merchandise. By Lord BLACKBURN. Second Edition. By J. C. GRAHAM, Esq., Barrister-at-Law. Royal 8vo. 1885. *1l. 1s.*

"We have no hesitation in saying that the work has been edited with remarkable ability and success, and if we may hazard a speculation on the cause, we should say that the editor has so diligently studied the excellent methods and work of his author as to have made himself a highly competent workman in the same kind."—*Law Quarterly Review.*

SALES OF LAND.—Clerke and Humphry's Concise Treatise on the Law relating to Sales of Land. By AUBREY ST. JOHN CLERKE, and HUGH M. HUMPHRY, Esqrs., Barristers-at-Law. Royal 8vo. 1885. *1l. 5s.*

Webster's Particulars and Conditions of Sale.—The Law relating to Particulars and Conditions of Sale on a Sale of Land. By WM. FREDK. WEBSTER, Esq., Barrister-at-Law. Royal 8vo. 1889. *1l. 1s.*

"Characterized by clearness of arrangement and careful and concise statement; and we think it will be found of much service to the practitioner."—*Solicitors' Journal.*

"A full account of case law, well arranged under convenient headings, together with a few precedents. The book is fit to be of practical service to a practical man."—*Law Quarterly Review.*

"It forms an admirable digest, evidently prepared with great care, and selected and arranged in a manner likely to be of great practical value. Its treatment has the air of thoroughness, and, although it hardly claims originality, it may be credited with utility."—*Law Journal.*

"A complete and accurate representation of the law. Nothing is shirked or slurred over."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

SETTLED ESTATES STATUTES.—Middleton's Settled Estates Statutes, including the Settled Estates Act, 1877, Settled Land Act, 1882, Improvement of Land Act, 1864, and the Settled Estates Act Orders, 1878, with Introduction, Notes and Forms. Third Edition. By JAMES W. MIDDLETON, Esq., Barrister-at-Law. Royal 12mo. 1882. 7*s.* 6*d.*

SHERIFF LAW.—Churchill's Law of the Office and Duties of the Sheriff, with the Writs and Forms relating to the Office. Second Edition. By CAMERON CHURCHILL, Esq., Barrister-at-Law. Demy 8vo. 1882. 1*l.* 4*s.*

"A very complete treatise."—*Solicitors' Journal.*
"Under-sheriffs, and lawyers generally, will find this a useful book."—*Law Mag.*

SHIPPING.—Boyd's Merchant Shipping Laws; being a Consolidation of all the Merchant Shipping and Passenger Acts from 1854 to 1876, inclusive, with Notes of all the leading English and American Cases, and an Appendix. By A. C. BOYD, LL.B., Esq., Barrister-at-Law. 8vo. 1876. 1*l.* 5*s.*

Foard's Treatise on the Law of Merchant Shipping and Freight. —By J. T. FOARD, Barrister-at-Law. Roy. 8vo. 1880. *Hf. cf.* 1*l.* 1*s.*

SLANDER.—Odgers.—*Vide* "Libel and Slander."

SOLICITORS.—Cordery's Law relating to Solicitors of the Supreme Court of Judicature. With an Appendix of Statutes and Rules, and Notes on Appointments open to Solicitors, and the Right to Admission to the Colonies. Second Edition. By A. CORDERY, Esq., Barrister-at-Law. Demy 8vo. 1888. 16*s.*

"The book is very clear, accurate, and practical, and will be found of much value. Without being bulky, it contains in a concise and intelligible form all the matters usually occurring in a solicitor's practice."—*Solicitors' Journal*, July 28, 1888.
"This is a very valuable work, and being the only one on the subject, the appearance of its second edition will be welcomed by the profession."—*Law Journal*, Jan. 21, 1888.

Turner.—*Vide* "Conveyancing" and "Vendors and Purchasers."

Whiteway's Hints to Solicitors.—Being a Treatise on the Law relating to their Duties as Officers of the High Court of Justice; with Notes on the Recent Changes affecting the Profession. By A. R. WHITEWAY, M.A., of the Equity Bar and Midland Circuit. Royal 12mo. 1883. 6*s.*

SPECIFIC PERFORMANCE.—Fry's Treatise on the Specific Performance of Contracts. By the Hon. Sir EDWARD FRY, a Lord Justice of Appeal. Second Edition. By the Author and W. DONALDSON RAWLINS, of Lincoln's Inn, Esq., Barrister-at-Law. Royal 8vo. 1881. 1*l.* 16*s.*

STAMP DUTY.—Gosset's Practical Guide to Account Stamp Duty, Customs, and Inland Revenue Act, 1881 (44 Vict. c. 12, s. 38). By J. A. GOSSET, of the Legacy and Succession Duty Office. Post 8vo. 1887. 5*s.*

"The author, by reason of his official position and the experience of six years' working of this section of the Act of 1881 (which imposed an entirely new duty), has been enabled to produce an exceptionally valuable guide."—*Law Times.*

STATUTE LAW.—Wilberforce on Statute Law. The Principles which govern the Construction and Operation of Statutes. By E. WILBERFORCE, Esq., Barrister-at-Law. 1881. 18*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

STATUTES, and *vide* "Acts of Parliament."

Chitty's Collection of Statutes from Magna Charta to 1890.—A Collection of Statutes of Practical Utility, arranged in Alphabetical and Chronological order, with Notes thereon. The Fourth Edition, with Supplement. By J. M. LELY, Esq., Barrister-at-Law. In 8 vols. Royal 8vo. 1880-90. Published at 17*l.* 11*s.* 6*d.*, reduced to *Net* 10*l.* 10*s.*

The following may still be had separately—

| | | |
|---|---|---|
| 6 vols. | To end of the year 1880. | *Net* 6*l.* 6*s.* |
| 50 & 51 Vict. | 1887. | 10*s.* 6*d.* |
| 51 & 52 Vict. | 1888. | 12*s.* 6*d.* |
| 51 & 52 Vict. | 1888. (Second Session.) | *Net* 2*s.* 6*d.* |
| 52 & 53 Vict. | 1889. | 10*s.* |
| 53 & 54 Vict. | 1890. | 15*s.* |

"It is needless to enlarge on the value of 'Chitty's Statutes' to both the Bar and to Solicitors, for it is attested by the experience of many years."—*The Times.*

"A very satisfactory edition of a time-honoured and most valuable work, the trusty guide of present, as of former, judges, jurists, and of all others connected with the administration or practice of the law."—*Justice of the Peace.*

"'Chitty' is pre-eminently a friend in need. Those who do not possess a complete set of the Statutes turn to its chronological index when they wish to consult a particular Act of Parliament. Those who wish to know what Acts are in force with reference to a particular subject turn to that head in 'Chitty,' and at once find all the material of which they are in quest. Moreover, they are, at the same time, referred to the most important cases which throw light on the subject."—*Law Journal.*

SUCCESSION.—Potts' Principles of the Law of Succession to Deceased Persons.—By T. RADFORD POTTS, B.C.L., M.A., Barrister-at-Law. Demy 8vo. 1888. 7*s.* 6*d.*

"We should have no hesitation in recommending it to a student who was to have a paper set on Succession generally."—*Saturday Review*, June 15th, 1889.

SUMMARY CONVICTIONS.—Paley's Law and Practice of Summary Convictions under the Summary Jurisdiction Acts, 1848 and 1879; including Proceedings preliminary and subsequent to Convictions, and the responsibility of Convicting Magistrates and their Officers, with Forms. Sixth Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. Demy 8vo. 1879. 1*l.* 4*s.*

Wigram.—*Vide* "Justice of the Peace."

SUMMONSES & ORDERS.—Archibald.—*Vide* "Chamber Practice."

TAXES ON SUCCESSION.—Trevor's Taxes on Succession.—A Digest of the Statutes and Cases (including those in Scotland and Ireland) relating to the Probate, Legacy and Succession Duties, with Practical Observations and Official Forms. Fourth Edition. By EVELYN FREETH and R. J. WALLACE, of the Legacy and Succession Duty Office. Royal 12mo. 1881. 12*s.* 6*d.*

"Contains a great deal of practical information."—*Law Journal.*

TAXPAYERS' GUIDES.—*Vide* "House Tax," "Income Tax," and "Land Tax."

THEATRES AND MUSIC HALLS.—Geary's Law of Theatres and Music Halls, including Contracts and Precedents of Contracts.—By W. N. M. GEARY, J.P. With Historical Introduction. By JAMES WILLIAMS, Esqrs., Barristers-at-Law. 8vo. 1885. 5*s.*

TITHES.—Bolton's Tithe Acts; including the Recent Act for the Limitation and Redemption of Extraordinary Tithe; with an Introduction and Observations and copious Index. By T. H. BOLTON, Solicitor. Royal 12mo. 1886. 6*s.*

Studd's Law of Tithes and Tithe Rent-Charge.—Being a Treatise on the Law of Tithe Rent-Charge, with a sketch of the History and Law of Tithes prior to the Commutation Acts. Second Edition. By EDWARD FAIRFAX STUDD, Esq., Barrister-at-Law. (*In the press.*)

"We can recommend it for professional use."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

**TORTS.**—Addison on Torts; being a Treatise on Wrongs and their Remedies. Sixth Edition. By HORACE SMITH, Esq., Bencher of the Inner Temple, Editor of "Addison on Contracts," &c. Royal 8vo. 1887. *1l. 18s.*

"Upon a careful perusal of the editor's work, we can say that he has done it excellently."—*Law Quarterly Review.*

"As now presented, this valuable treatise must prove highly acceptable to judges and the profession."—*Law Times.*

"An indispensable addition to every lawyer's library."—*Law Magazine.*

**Ball's Leading Cases on the Law of Torts,** with Notes. Edited by W. E. BALL, LL.D., Esq., Barrister-at-Law, Author of "Principles of Torts and Contracts." Royal 8vo. 1884. *1l. 1s.*

"The notes are extremely, and as far as we have been able to discover uniformly, good. . . . There is much intelligent and independent criticism."—*Solicitors' Journal.*

"All the cases given are interesting, and most of them are important, and the comments in the notes are intelligent and useful."—*Law Journal.*

**Pollock's Law of Torts:** a Treatise on the Principles of Obligations arising from Civil Wrongs in the Common Law. Second Edition, to which is added the draft of a Code of Civil Wrongs prepared for the Government of India. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law. Author of "Principles of Contract," "A Digest of the Law of Partnership," &c. Demy 8vo. 1890. *21s.*

"Concise, logically arranged, and accurate."—*Law Times.*

"A book which is well worthy to stand beside the companion volume on 'Contracts.' Unlike so many law-books, especially on this subject, it is no mere digest of cases, but bears the impress of the mind of the writer from beginning to end."—*Law Journal.*

**Shearwood's Sketch of the Law of Tort** for the Bar and Solicitors Final Examinations. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. Author of "Concise Abridgments of the Law of Real and Personal Property," &c. Royal 12mo. 1886. *3s.*

**TRADE MARKS.**—Aston.—*Vide* "Patents."

**Graham's Designs and Trade Marks.**—By JOHN CAMERON GRAHAM, of the Middle Temple, Barrister-at-Law. Demy 8vo. 1889. *6s.*

**Sebastian on the Law of Trade Marks and their Registration,** and matters connected therewith, including a chapter on Goodwill; together with the Patents, Designs and Trade Marks Acts, 1883-8, and the Trade Marks Rules and Instructions thereunder; Forms and Precedents; the Merchandize Marks Act, 1887, and other Statutory Enactments; the United States Statutes, 1870-81, and the Rules and Forms thereunder; and the Treaty with the United States, 1877. Third Edition. By LEWIS BOYD SEBASTIAN, Esq., Barrister-at-Law. Demy 8vo. 1890. *1l. 5s.*

"The work stands alone as an authority upon the law of trade-marks and their registration."—*Law Journal*, August 2, 1890.

"It is hardly necessary to tell anyone who has consulted the last edition of this book that it is characterized by mastery of the subject, exemplary industry, and completeness and accuracy of statement It is rarely we come across a law book which embodies the results of years of careful investigation and practical experience in a branch of law, or that can be unhesitatingly appealed to as a standard authority. This is what can be said of Mr. Sebastian's book."—*Solicitors' Journal*, Nov. 1, 1890.

**Sebastian's Digest of Cases of Trade Mark, Trade Name, Trade Secret, Goodwill, &c.,** decided in the Courts of the United Kingdom, India, the Colonies, and the United States of America. By LEWIS BOYD SEBASTIAN, Esq., Barrister-at-Law. 8vo. 1879. *1l. 1s.*

"A digest which will be of very great value to all practitioners who have to advise on matters connected with trade marks."—*Solicitors' Journal.*

**Hardingham's Trade Marks:** Notes on the British, Foreign, and Colonial Laws relating thereto. By GEO. GATTON MELHUISH HARDINGHAM, Consulting Engineer and Patent Agent. Royal 12mo. 1881. *Net, 2s. 6d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

**TRAMWAYS.**—Sutton's Tramway Acts of the United Kingdom; with Notes on the Law and Practice, an Introduction, including the Proceedings before the Committees, Decisions of the Referees with respect to Locus Standi, and a Summary of the Principles of Tramway Rating, and an Appendix containing the Standing Orders of Parliament. Rules of the Board of Trade relating to Tramways, &c. Second Edition. By HENRY SUTTON, assisted by ROBERT A. BENNETT, Barristers-at-Law. Demy 8vo. 1883. 15*s.*

**TRUST FUNDS.**—Geare's Investment of Trust Funds.—Incorporating the Trustee Act, 1888. By EDWARD ARUNDEL GEARE, Esq., Barrister-at-Law. Second Edition. Including the Trusts Investment Act, 1889. Royal 12mo. 1889. 7*s.* 6*d.*

"The work is written in an easy style, it can very well be read by all trustees, whether they are lawyers or not; and if they will take our advice, and invest their money here before they invest other people's elsewhere, they may be spared much trouble in the future."—*The Jurist.*

**TRUSTS AND TRUSTEES.**—Godefroi's Law Relating to Trusts and Trustees.—Second Edition. By HENRY GODEFROI, of Lincoln's Inn, Esq., Barrister-at-Law. Royal 8vo. 1891. 1*l.* 12*s.*

"The second edition of this work which lies before us is a model of what a legal text-book ought to be. It is clear in style and clear in arrangement, and we can have little doubt that it will soon take the foremost place among text-books dealing with trusts. Moreover, it is brought up to date by including in its scope the Trust Investment Act of 1889, and the Settled Land Act, 1890. The chapter on Precatory Trusts in Mr. Godefroi's work seems to us particularly good and clear, and the many judicial decisions as to what expressions are sufficient and what are insufficient to import a trust are marshalled with great care and accuracy."—*Law Times*, April 18, 1891.

**Hamilton's Trustee Acts.**—Containing the Trustee Act, 1850; the Trustee Extension Act, 1852; and the Trustee Act, 1888; with Supplement of the Lunacy Act, 1890 (53 Vict. c. 5), so far as relates to Vesting Orders. By G. BALDWIN HAMILTON, Esq., Barrister-at-Law, Author of "A Concise Treatise on the Law of Covenants." Demy 8vo. 1890. 6*s.*

"This is a very useful little book. We have perused it with much care, and we have come to the conclusion that it may be safely trusted to as a guide to the complicated law to which it relates."—*Law Quarterly Review.*

**VENDORS AND PURCHASERS.**—Dart's Vendors and Purchasers.—A Treatise on the Law and Practice relating to Vendors and Purchasers of Real Estate. By the late J. HENRY DART, Esq., one of the Six Conveyancing Counsel of the High Court of Justice, Chancery Division. Sixth Edition. By WILLIAM BARBER, Esq., one of Her Majesty's Counsel, RICHARD BURDON HALDANE, and WILLIAM ROBERT SHELDON, both of Lincoln's Inn, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1888. 3*l.* 15*s.*

"The new edition of Dart is far ahead of all competitors in the breadth of its range, the clearness of its exposition, and the soundness of its law."—*Law Times.*

"The extensive changes and numerous improvements which have been introduced are the result of assiduous labour, combined with critical acumen, sound knowledge, and practical experience."—*Law Quarterly Review.*

**Turner's Duties of Solicitor to Client as to Sales, Purchases, and Mortgages of Land.**—By EDWARD F. TURNER, Solicitor, Lecturer on Real Property and Conveyancing. Demy 8vo. 1883. 10*s.* 6*d.*

*See also* Conveyancing.—"Turner."

"A careful perusal of these lectures cannot fail to be of great advantage to students, and more particularly, we think, to young practising solicitors."—*Law Times.*

**WAR, DECLARATION OF.**—Owen's Declaration of War.—A Survey of the Position of Belligerents and Neutrals, with relative considerations of Shipping and Marine Insurance during War. By DOUGLAS OWEN, Barrister-at-Law. Demy 8vo. 1889. 21*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

WATERS.—Musgrave's Dissertation on the Common Law of Waters and its Application to Natural Circumstances other than those of England.—By W. A. B. MUSGRAVE, D.C.L., of the Inner Temple, Barrister-at-Law. Demy 8vo. 1890. *Net*, 2*s*.

WILLS.—Theobald's Concise Treatise on the Law of Wills.—Third Edition. By H. S. THEOBALD, Esq., Barrister-at-Law. Royal 8vo. 1885. 1*l*. 10*s*.

"A book of great ability and value. It bears on every page traces of care and sound judgment. It is certain to prove of great practical usefulness."—*Solicitors' Journal.*

Weaver's Precedents of Wills.—A Collection of Concise Precedents of Wills, with Introduction, Notes, and an Appendix of Statutes. By CHARLES WEAVER, B.A. Post 8vo. 1882. 5*s*.

WINDING UP.—Palmer's Winding-up Forms.—A Collection of 580 Forms of Summonses, Affidavits, Orders, Notices and other Forms relating to the Winding-up of Companies. With Notes on the Law and Practice, and an Appendix containing the Acts and Rules. By FRANCIS BEAUFORT PALMER, Esq., Barrister-at-Law, Author of "Company Precedents," &c. 8vo. 1885. 12*s*.

Pitt-Lewis' Winding-up Practice.—A Manual of the Practice as to Winding-up in the High Court and in the County Court; being the Companies (Winding-up) Act, 1890, and the Winding-up of Companies and Associations (Part IV. of the Companies Act, 1862), as now amended, with Notes, and the Companies Winding-up Rules, 1890. Forming a SUPPLEMENT to "A Complete Practice of the County Courts." By G. PITT-LEWIS, Q.C., M.P., Recorder of Poole. Demy 8vo. 1891. 7*s*. 6*d*.

"This is a book that we can cordially recommend, and forms a fitting supplement to the aptly-named larger work of the same author."—*Law Gazette*, March 5, 1891.

WRECK INQUIRIES.—Murton's Law and Practice relating to Formal Investigations in the United Kingdom, British Possessions and before Naval Courts into Shipping Casualties and the Incompetency and Misconduct of Ships' Officers. With an Introduction. By WALTER MURTON, Solicitor to the Board of Trade. Demy 8vo. 1884. 1*l*. 4*s*.

WRONGS.—Addison, Ball, Pollock, Shearwood.—*Vide* "Torts."

---

REPORTS.—**A large Stock, New and Second-hand. Prices on application.**

BINDING.—**Executed in the best manner at moderate prices and with dispatch.**

## The Law Reports, Law Journal, and all other Reports, bound to Office Patterns, at Office Prices.

PRIVATE ACTS.—*The Publishers of this Catalogue possess the largest known collection of Private Acts of Parliament (including Public and Local), and can supply single copies commencing from a very early period.*

*LICENSED VALUERS* for Probate, Partnership, &c.

**LIBRARIES PURCHASED OR EXCHANGED.**

STEVENS AND SONS, LD., 119 & 120, CHANCERY LANE, LONDON.

# NEW WORKS AND NEW EDITIONS.

Carver's Carriage by Sea: a Treatise on the Law relating to the Carriage of Goods by Sea.—Second Edition. By THOMAS GILBERT CARVER, Esq., Barrister-at-Law. Royal 8vo. (*Nearly ready.*)

Chalmers' Digest of the Law of Bills of Exchange, Promissory Notes, Cheques, and Negotiable Securities. Fourth Edition. By His Honour Judge CHALMERS, Draughtsman of the Bills of Exchange Act, 1882, &c. Demy 8vo. (*In the press.*)

Kennedy's Law of Civil Salvage.—By WILLIAM RANN KENNEDY, Esq., one of Her Majesty's Counsel. (*In the press.*)

Phillimore's Ecclesiastical Law of the Church of England.—Second Edition. Edited by Sir WALTER GEO. FRANK PHILLIMORE, Bart., D.C.L., Chancellor of the Diocese of Lincoln. (*In preparation.*)

Rawson's Profit-Sharing Precedents, with Notes.—By HENRY G. RAWSON, of the Inner Temple, Esq., Barrister-at-Law. (*In the press.*)

Roscoe's Admiralty Practice.—Third Edition. By E. S. ROSCOE and T. LAMBERT MEARS, Esqrs., Barristers-at-Law. (*In preparation.*)

Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—Sixteenth Edition. By MAURICE POWELL, Esq., Barrister-at-Law. 2 vols Demy 8vo. (*Nearly ready.*)

Russell's Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards.—7th Edit. By the Author and HERBERT RUSSELL, Esq., Barrister-at-Law. (*In the press.*)

Selwyn's Abridgment of the Law of Nisi Prius.—14th Edition. By W. H. MACNAMARA, Esq., Barrister-at-Law. (*In preparation.*)

Seton's Forms of Judgments and Orders in the High Court of Justice and Courts of Appeal, having especial reference to the Chancery Division, with Practical Notes. Fifth Edition. By C. C. M. DALE, of Lincoln's Inn, Esq., Barrister-at-Law, and W. CLOWES, Esq., one of the Registrars of the Supreme Court. (*In the press.*)

Studd's Law of Tithes and Tithe Rent-Charge.—Being a Treatise on the Law of Tithe Rent-Charge, with a sketch of the History and Law of Tithes prior to the Commutation Acts. Second Edition. By EDWARD FAIRFAX STUDD, Esq., Barrister-at-Law. (*In the press.*)

Talbot and Fort's Index of Cases Judicially noted (1865—1890); being a List of all Cases cited in Judgments reported in the "Law Reports," "Law Journal," "Law Times," and "Weekly Reporter," from Michaelmas Term, 1865 to the end of 1890, with the places where they are so cited.—By GEORGE JOHN TALBOT and HUGH FORT, Barristers-at-Law. (*Nearly ready.*)

Theobald and Schuster's Lunacy Act, 1890, with Notes.—By H. S. THEOBALD and E. J. SCHUSTER, Barristers-at-Law. (*In preparation.*)

Wharton's Law Lexicon.—Forming an Epitome of the Law of England, and containing full Explanations of the Technical Terms and Phrases thereof, both Ancient and Modern; including the various Legal Terms used in Commercial Business. Together with a Translation of the Latin Law Maxims and selected Titles from the Civil, Scotch and Indian Law. Ninth Edition. By J. M. LELY, Esq., Barrister-at-Law. Super-royal 8vo. (*In preparation.*)

Whitehead's Church Law.—Being a Concise Dictionary of Statutes, Canons and Regulations affecting the Clergy and Laity. By BENJAMIN WHITEHEAD, B.A., Esq., Barrister-at-Law. (*In preparation.*)

Williams' Law of Executors and Administrators.—Ninth Edition. By the Hon. Sir ROLAND VAUGHAN WILLIAMS, a Justice of the High Court. 2 vols. Royal 8vo. (*In the press.*)

**Stringer's Oaths and Affirmations in Great Britain and** Ireland; being a Collection of Statutes, Cases, and Forms, with Notes and Practical Directions for the use of Commissioners for Oaths, and of all Courts of Civil Procedure and Offices attached thereto. [In succession to "Braithwaite's Oaths."] By FRANCIS A. STRINGER, of the Central Office, Supreme Court of Judicature, one of the Editors of the "Annual Practice." *Crown* 8*vo.* 1890. *Price* 3*s.* 6*d. cloth.*

"Indispensable to all Commissioners."—*Solicitors' Journal.*

**Thring's Joint Stock Companies' Law.**—The Law and Practice of Joint Stock and other Companies, including the Companies Acts, 1862 to 1886, with Notes, Orders, and Rules in Chancery, a Collection of Precedents of Memoranda and Articles of Association, and other Forms required in Making and Administering a Company. By Lord THRING, K.C.B. *Fifth Edition.* By J. M. RENDEL, Esq., Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 1*l.* 10*s. cloth.*

"The highest authority on the subject."—*The Times.*

**Woodfall's Law of Landlord and Tenant.**—With a full Collection of Precedents and Forms of Procedure; containing also a Collection of Leading Propositions. *Fourteenth Edition.* By J. M. LELY, Esq., Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 1*l.* 18*s. cloth.*

**Lely and Peck's Precedents of Leases for Years, and other** Contracts of Tenancy, and Contracts relating thereto, mainly selected or adapted from existing Collections, including many additional Forms, with a short Introduction and Notes. By J. M. LELY and W. A. PECK, Esqrs., Barristers-at-Law. *Royal* 8*vo.* 1889. *Price* 10*s.* 6*d. cloth.*

**Oldham and Foster on the Law of Distress**—A Treatise on the Law of Distress, with an Appendix of Forms, Table of Statutes, &c. *Second Edition.* By ARTHUR OLDHAM and A. LA TROBE FOSTER, Esqrs., Barristers-at-Law. *Demy* 8*vo.* 1889. *Price* 18*s. cloth.*

**Daniell's Chancery Forms.**—*Fourth Edition.* Forms and Precedents of Proceeding in the Chancery Division of the High Court of Justice and on Appeal therefrom. *Fourth Edition.* With Summaries of the Rules of the Supreme Court, Practical Notes and References to the Sixth Edition of "Daniell's Chancery Practice." By CHARLES BURNEY, B.A. (Oxon.), a Chief Clerk of the Hon. Mr. Justice Chitty. *Royal* 8*vo.* (1260 pp.) 1885. *Price* 2*l.* 10*s. cloth.*

**Edwards' Law of Execution upon Judgments and Orders** of the Chancery and Queen's Bench Divisions of the High Court of Justice. By C. J. EDWARDS, Esq., Barrister-at-Law. *Demy* 8*vo.* 1888. *Price* 16*s. cloth.*

**Chambers' Law relating to Local Rates,** with especial reference to the Powers and Duties of Rate-levying Local Authorities, and their Officers. Comprising the Statutes in full and a Digest of 718 Cases. By G. F. CHAMBERS, Esq., Barrister-at-Law. *Royal* 8*vo.* 1889. *Price* 10*s.* 6*d. cloth.*

**Bullen and Leake's Precedents of Pleadings,** with Notes and Rules relating to Pleading. Revised and adapted to the Present Practice in the Queen's Bench Division of the High Court of Justice. *Fourth Edition.* Part II. By THOMAS J. BULLEN and CHARLES WALTER CLIFFORD, Esqrs., Barristers-at-Law. *Royal* 12*mo.* 1888. *Price* 24*s. cloth.*

*** **Part I., "Statements of Claim," may still be had, price 24s.**

**Macnamara's Law of Carriers.**—A Digest of the Law of Carriers of Goods and Passengers by Land and Internal Navigation. By WALTER HENRY MACNAMARA, Esq., Barrister-at-Law, Registrar to the Railway Commission. *Royal* 8*vo.* 1888. *Price* 1*l.* 8*s. cloth.*

"We cordially approve of the general plan and execution of this work."—*Solicitors' Journal.*

**Browne and Theobald's Law of Railway Companies.**—Being a Collection of the Acts and Orders relating to Railway Companies in England and Ireland, with Notes of all the Cases decided thereon, and Appendix of Bye-Laws and Standing Orders of the House of Commons. *Second Edition.* By J. H. BALFOUR BROWNE, Esq., one of Her Majesty's Counsel, and H. S. THEOBALD, Esq., Barrister-at-Law. *Royal* 8*vo.* 1888. *Price* 1*l.* 15*s. cloth.*

"Contains in a very concise form the whole law of railways."—*The Times.*

**Geare's Investment of Trust Funds.**—Incorporating the Trustee Act, 1888. *Second Edition.* Including the Trusts Investment Act, 1889. By EDWARD ARUNDEL GEARE, Esq., Barrister-at-Law. *Royal* 12*mo.* 1889. *Price* 7*s.* 6*d. cloth.*